

Nos. 21-cv-7532 (Lead); 21-cv-7585; 21-cv-7961; 21-cv-7962; 21-cv-7966; 21-cv-7969; 21-cv8034; 21-cv-8042; 21-cv-8049; 21-cv-8055; 21-cv-8139; 21-cv-8258; 21-cv-8271; 21-cv-8538; 21-cv-8557; 21-cv-8566 (Consolidated)

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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IN RE PURDUE PHARMA L.P., ET AL., DEBTORS

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APPEALS FROM THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
BANKR. CASE No. 19-23649 (RDD)

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**APPENDIX TO THE AD HOC GROUP OF INDIVIDUAL VICTIMS'  
(I) APPELLEE BRIEF AND (II) JOINDER TO THE APPELLEE  
BRIEFS OF THE DEBTORS' AND THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS**

**VOLUME II**

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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

4 - - - - - x

5 In the Matter of:

6

7 PURDUE PHARMA L.P.,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 June 3, 2020

17 10:03 AM

18

19

20

21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

1 HEARING re Amended Agenda (ECF #1219)

2

3 Motion Pursuant to 11 U.S.C. §§ 105(a) and 501 and Fed. R.

4 Bankr. P. 2002 and 3003(c)(3) for Entry of an Order (I)

5 Extending the General Bar Date for a Limited Period and (II)

6 Approving the Form and Manner of Notice Thereof filed by

7 James I. McClammy on behalf of Purdue Pharma L.P. (ECF#1178)

8

9 Objection Limited Objection of the Ad Hoc Committee on

10 Accountability to the Debtors Motion for an Order Extending

11 General Bar Date (related document(s)1178) (ECF #1187)

12

13 Limited Objection of the Non-Consenting States To Debtors'

14 Motion (related document(s)1178) filed by Andrew M. Troop on

15 behalf of Ad Hoc Group of Non- Consenting States. (Troop,

16 Andrew) (ECF #1197)

17

18 Ad Hoc Committee's Objection to Requests to Extend the Bar

19 Date (related document(s)1178, 1173) filed by Kenneth H.

20 Eckstein on behalf of Ad Hoc Committee of Governmental and

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22

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24

25

1 Supplemental Declaration of Jeanne C. Finegan (related  
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4  
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14 Hoc Committee on Accountability (ECF #1189)

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20 document(s)1178) (ECF #1196)

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1 Statement of the Ad Hoc Group of Individual Victims (I) in  
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19 individual claims to September 30th. (related  
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1 Letter to Judge Drain re: support to Harrison Cullens  
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19 days for filing of individual claims filed by Dan Schneider  
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1 Letter to Judge Drain re: Support Harrison Cullens request  
2 filed on 5/6/20 to extend deadline for individual claims to  
3 September 30th (related document(s)1133) Filed by Maryanne  
4 Frangules MOAR Executive Director (ECF #1160)

5  
6 Motion to File Proof of Claim After Claims Bar Date filed by  
7 On behalf of the Farash Family Barbara Farash (ECF #1168)

8  
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12  
13 Statement / Multi-State Governmental Entities Groups  
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17  
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23 J. Christopher Shore (ECF #1198)

24  
25

1 Limited Objection of the Debtors to Pending Requests  
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3 1157, 1158) (related document(s) 1149, 1153, 1173,  
4 1174, 1133, 1145, 1142, 1160, 1141) filed by James I.  
5 McClammy on behalf of Purdue Pharma L.P. (ECF #1199)

6  
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10 behalf of The Official Committee of Unsecured Creditors of  
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12  
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15 Ad Hoc Group of Non-Consenting States (ECF #1173)

16  
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19 Kenneth H. Eckstein on behalf of Ad Hoc Committee of  
20 Governmental and Other Contingent Litigation Claimants (ECF  
21 #1202)

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P R O C E E D I N G S

THE COURT: Good morning. This is Judge Drain and we're here in In re Purdue Pharma, LP, et al. This is a completely telephonic hearing; therefore, I'm going to ask you stating your name and client the first time you speak, to do so again if you come in later in the hearing and one would reasonably believe that the Court reporter might not know who you are from your voice. I may ask you to identify yourself also for that same reason later in the hearing.

There is only one authorized recording of this hearing. It's being taken by Court Solutions. Court Solutions provides that recording to our clerk's office on a daily basis. If you want a transcript of the hearing, you should contact the clerk's office to arrange for one.

So, with that introduction, I have the amended agenda for today's hearing, which really covers only one matter, which is the issue of the proposed extension of the June 30 bar date in this case. So, with that introduction, I should hear from counsel for the Debtors on their motion.

MR. HUEBNER: Sure. Good morning, Your Honor. It's Marshall Huebner of Davis, Polk, and Wardwell for the Debtors. Can I be heard clearly and well?

THE COURT: Yes. Yeah, fine, thank you.

MR. HUEBNER: Sure. Okay. Let me begin on a more personal note to the Court. The U.S. Trustee's office,

1 really everybody on the line, obviously, these are very  
2 difficult, painful, and trying times in many ways. I hope  
3 that people are all safe and healthy and well in their  
4 various circumstances. I also did want to thank the Court.  
5 This is, obviously, and extra hearing on top of our normal  
6 omnibus schedule. We are all very well aware of how  
7 burdened the Court is on multiple, very large matters, and  
8 so thank you for accommodating us in something that,  
9 obviously, we think is quite important.

10 I want to spend just about three minutes, Your  
11 Honor. We try to give very brief case updates since,  
12 obviously, there are -- sort of 97 percent of the iceberg is  
13 under the waterline and not visible and most of it, frankly,  
14 should be that way until it's time to bring it to the Court  
15 or other attention, but there are a couple of things, I  
16 think, are worth just quickly noting, none of which may be  
17 news, but still worth noting.

18 Last week, we filed what we call Report 1D, Your  
19 Honor, which is a very detailed and voluminous, I think 401  
20 pages, I think, probably even without exhibits, report that  
21 is covering the period from January 1 of 2008 until, I  
22 believe, the petition date. It covers all intercompany and  
23 other corporate transactions between the Debtors on the one  
24 hand, and shareholder and other shareholder-owned entities  
25 on the other hand, and all non-cash transfers.

1           As the Court surely remembers, on December 16th,  
2           only three months after the filing date, we filed an equally  
3           extraordinarily detailed and thorough Report 1A. Report 1A  
4           covered all cash distributions and dividends and the like,  
5           but obviously, there was more connectivity between Purdue on  
6           the one hand and the shareholders and shareholder-owned  
7           companies on the other hand.

8           Report 1B is the other half of the circle, so  
9           whether it was a dividend or something that was not cash or  
10          whether it was a contractual relationship or royalty  
11          agreement, anything, this is designed to be another massive  
12          plank in our early promise of, what I think, can probably  
13          fairly be called radical transparency. And this, I think,  
14          now covers the waterfront for all transaction for a very  
15          long period between the Debtors on the one hand and the  
16          shareholders and shareholder-owned entities on the other  
17          hand.

18          I should also note, because it hasn't come up, I  
19          think, to anyone's attention recently, but we know that some  
20          creditors hold it very sacred and we're still waiting for  
21          proposals for -- from some of them for some more  
22          granularity, but we have also not forgotten the promise that  
23          we made several times on the record -- and as I think this  
24          Court knows, we always keep our promises -- that when this  
25          case is over, as soon as we can all get it over, for any

1     number of reasons, responsibly and well, and the plan and  
2     the releases contemplated go effective, with whatever final  
3     form the plan takes, there will be a repository of documents  
4     the way there has been other -- after other analogous  
5     situations, like, I believe, tobacco, for example.

6             We know that that is important to people and I  
7     don't want it to think -- I don't want anybody to think the  
8     we have forgotten about that commitment. The only other  
9     thing that I will quickly mention before I turn to the,  
10    essentially, single item on the agenda is mediation, and I  
11    think brevity is probably appropriate here. People are very  
12    hard at work on the mediations. The mediators, themselves,  
13    are also very hard at work.

14            There were many mediations days in May. There are  
15    many mediation days in June, and I think that it's  
16    proceeding. More than that, I probably should not say, but  
17    I didn't want the Court to think that despite the  
18    complexities of everybody's current situation, that the  
19    bottom 97 percent of the iceberg was not proceeding along  
20    multiple fronts. It most assuredly is.

21            With respect to today's hearing, Your Honor, let  
22    me now turn to the agenda. It will, on the main, be handled  
23    by my partner, Jim McClammy who, for today's purposes, we  
24    will actually just call Mr. McClammy as opposed to saying  
25    Jim. I would note that the agenda letter is slightly



1 complicated because there were some letters from patient  
2 advocate and similar groups that were put on the docket  
3 early on. We don't -- I don't know the origin of those or  
4 whether it's a concerted effort. Doesn't really matter.

5 People have a right to express views; although, we  
6 do remain concerned that groups continue to use our docket  
7 to express their views on topics, as opposed to seeking  
8 relief from the Court. Those were more in the nature of  
9 hybrid letters, and then, although the core parties knew  
10 that we were on the very brink of filing a motion, we did  
11 get a kind of statement and memorandum of law from the non-  
12 consenting states filed a few hours before our motion hit  
13 the docket.

14 I think Your Honor already said, as we see it,  
15 this is really a single-issue hearing. I think probably the  
16 right order of operations -- sorry, one last thing.

17 We did confirm with Mr. Troop that they do not  
18 intend to cross examine Ms. Finegan, because that would have  
19 made this hearing much more complicated, and I actually  
20 don't think that any of the facts in the Prime Clerk  
21 declaration are disputed by anybody, but I'll leave the  
22 technicalities of moving that into evidence to Mr. McClammy,  
23 but it was important to us because, obviously, if there was  
24 going to be a cross examination, the Court might have wanted  
25 video or some other mechanic to ensure that a witness could

1 be sworn in, but we don't believe that is the case.

2 And so, what I think probably makes sense and  
3 they're sort of two different movants at the end of the day.  
4 I think there is our motion that seeks the 30-day extension  
5 and then there's Mr. Troop's sort of motion, statement and  
6 memorandum, that seeks a 90-day extension, and there are a  
7 whole bunch of other people who just have views on those  
8 two, I don't know, ideas, for lack of a better word.  
9 Probably, it makes sense for the Debtors to go first, which  
10 Your Honor has already said, so I think that's definitely  
11 what's happening.

12 It probably makes sense for Mr. Troop to go second  
13 because, I think, he's probably the chief spokesman of the  
14 other point of view, and then I think -- and the Committee  
15 actually put a very helpful chart in their pleading, showing  
16 sort of the lay of the land. Now I think at that point,  
17 maybe we turn the podium over -- and I didn't write out an  
18 order because I didn't want to be cheeky, but obviously,  
19 there are a variety of other major stakeholders who have  
20 views on zero, 30, 90, something else, and then we sort of  
21 maybe bring it home after that.

22 So, if that sounds sensible, I will turn the  
23 podium over to Mr. McClammy and then Mr. Troop can follow  
24 and then we'll sort of figure out a good order of operations  
25 for the people who have views on, essentially, the two

1 primary options before the Court. Is that --

2 THE COURT: Okay.

3 MR. HUEBNER: -- sensible, Your Honor?

4 THE COURT: Well, I actually believe there's only  
5 one motion before me, which is the Debtors motion. That  
6 isn't to say that -- I take seriously the other matters on  
7 the docket, including the Ad Hoc Committee of States  
8 filings, but there really only is one motion before me, and  
9 of course, this is motion for relief from an order, my prior  
10 bar date order, from February.

11 So, I think it is appropriate to proceed with that  
12 motion, but I also think, the order that you're suggesting,  
13 which is that your presentation be followed by the Ad Hoc  
14 Non-Consenting States Committee is fine. So, why don't we  
15 proceed on that basis?

16 MR. HUEBNER: Okay, terrific. So then, I will  
17 turn my microphone onto mute and ask for Mr. McClammy to  
18 take over, including whatever admission of the declaration  
19 is necessary, and thank you.

20 THE COURT: Okay.

21 MR. MCCLAMMY: Good morning, Your Honor. Jim  
22 McClammy on behalf of -- Jim McClammy of David, Polk, and  
23 Wardwell on behalf of the Debtors.

24 THE COURT: Morning.

25 MR. MCCLAMMY: Good morning. With us on the phone

1 today is Ms. Jeanne Finegan, our declarant from Prime Clerk.  
2 Also, on the phone from Davis Polk, we have Ms. Jacquelyn  
3 Knudson and Ester Townes, my David Polk colleagues who have  
4 been, really, unflagging in their efforts in connection with  
5 the bar date, and their efforts have been greatly  
6 appreciated.

7 And as Mr. Huebner mentioned, all parties, I  
8 believe, really greatly appreciate, especially in these  
9 trying times, the Court's and the parties' efforts to  
10 continue to move these cases forward.

11 So, with that, Your Honor, I'll turn to the fact  
12 that we have on, before the Court today, the motion to  
13 extend the bar date by 30 days. I'll note that that has  
14 been supported by the Unsecured Creditors Committee, the  
15 Multistate Governmental Entities Ad Hoc Group, and the Ad  
16 Hoc Group of Individual Victims.

17 I believe it was noted in the statement in support  
18 by the Unsecured Creditors Committee that the Individual  
19 Victims Ad Hoc Group may have taken the position that they  
20 were supporting the motion only with respect to personal  
21 injury victims. Our read of their papers, and after further  
22 communications with counsel for the Individual Victims  
23 Group, it is our understanding that they support the  
24 extension of extension of the bar date for all potential  
25 claimants, and not just the individual victims.

1           Your Honor, I'd like to make, I think, a brief  
2       statement, just to give an overview of the Debtors'  
3       positions with respect to the various statements that have  
4       been filed in support and in opposition to our motion, then,  
5       I would then propose to move into evidence the declaration  
6       of Ms. Finegan before we move on to a brief legal argument  
7       addressing each of the objections, if that's okay with Your  
8       Honor.

9           THE COURT:   That's fine.

10          MR. MCCLAMMY:   Thank you, Your Honor.   You know,  
11       as Your Honor knows, it's the Debtors' job, really, to be  
12       good stewards of these cases, and often, as here, that means  
13       managing the requests and views of all parties in interest,  
14       in light of what is necessary to both move these cases  
15       forward without undue delay and without increasing the  
16       administrative burden on the bankruptcy, on these estates.  
17       And it was really, with that in mind, that the Debtors  
18       reviewed and really took into consideration the many  
19       conflicting views that they've received in light of the  
20       submissions that were made with respect to the ongoing  
21       COVID-19 pandemic.

22          Some of the key constituencies, as mentioned,  
23       including the Ad Hoc Committee of Governmental and Other  
24       Contingent Litigation Claimants have made it clear that they  
25       do not believe that any extension of the bar date is

1 necessary, whether it be 30 days or 90 days. However, the  
2 Ad Hoc Committee did agree that, should an extension be  
3 granted, it should be for 30 days. Others, particularly  
4 those individual creditors and groups, including the Ad Hoc  
5 Group of Non-Consenting States have filed requests for  
6 extensions on the docket and believe that the bar date  
7 should be extended for a prolonged period of at least 90  
8 days.

9 And still others, like the Official Committee of  
10 Unsecured Creditors, the Ad Hoc Group of Individual Victims,  
11 and the Multi-State Governmental Entities Group, have  
12 supported the Debtors' request for a limited 30-day, one-  
13 time extension for all potential claimants, even though some  
14 of them may have not preferred to have any extension of the  
15 general bar date at all.

16 For their part, the Debtors believe supplemental  
17 notice plan is running successfully and effectively, and  
18 it's providing notice to the Debtors' potential claimants  
19 and also provides a workable way for them to file their  
20 proofs of claim. In fact, with the increased time spent in  
21 front of TVs and online as a result of COVID-19, some of the  
22 elements of the plan, really, have already over delivered.

23 And I say that, all to make clear that the Debtors  
24 did not determine that 30 days was the right amount of time  
25 to extend the general bar date in light of COVID-19, in a

1 vacuum. The Debtors have spent considerable time  
2 reconciling those varying views in light of the success of  
3 the notice program and evaluating that and the needs of  
4 these cases, before determining if 30 days was the right  
5 number.

6 In landing on that 30-day timeframe, the Debtors  
7 considered a number of key factors. First, there is no  
8 credible argument that the Debtors, with the noticing agent,  
9 have not been providing adequate notice to potential  
10 claimants through what this Court knows is an unprecedented,  
11 robust, and multifaceted supplemental notice plan.

12 Second, the notice program and the claims filing  
13 process was developed with mechanisms in place that, as it  
14 turns out, are workable, even during the pandemic and the  
15 shutdown. There's a toll-free number and online information  
16 available. There's the fact that the claimants are allowed  
17 to request and file proofs of claim forms by mail.

18 We required only a baseline of necessary  
19 information, and we simplified the forms in a way that took  
20 into account these considerations, after having discussed  
21 them with all of the creditor constituencies that ended up  
22 supporting the bar date when it was first presented to the  
23 Court, including with respect to the ability to provide  
24 information with the filing of your claims and  
25 documentations with the filing of your claims, but not

1 making that a necessary component of filing those claims.

2 Third, is generalized and potentially -- the  
3 generalized and potentially speculative assertions of  
4 difficulty in filing claims cannot, in and of themselves,  
5 justify the substantial cost to these estates and the  
6 resulting reduction and potential recovery to the Debtors'  
7 claimants, that a delay due to a prolonged extension of the  
8 bar date would cause.

9 In addition to the fact, that there will be the  
10 direct cost of about \$700,000 to conduct the notice program  
11 for the extension, there will also be substantial secondary  
12 costs, including from keeping the bankruptcy estate in place  
13 longer than otherwise might be, the cost of which has been  
14 in the millions, indeed perhaps tens of millions of dollars  
15 per month in these cases in recent times.

16 Fourth, to the extent that potential claimants do  
17 have legitimate individualized claims of difficulties  
18 warranting a deviation from the bar date, the Bankruptcy  
19 Code and the bankruptcy rules provide mechanisms for those  
20 claimants to seek appropriate relief from the Court.

21 And fifth, with the proposed 30-day extension, the  
22 bar date in this case will have run for 178 days, a time  
23 period that is much longer than the bar date periods in  
24 other mass tort bankruptcy cases.

25 With that general overview, Your Honor, I would



1 like to move now for the submission into evidence of the  
2 declaration of Ms. Jeanne C. Finegan. As I mentioned, Ms.  
3 Finegan is on the phone and she is a vice president of  
4 notice and media solutions at Prime Clerk, LLC. She  
5 submitted a declaration in connection with the original bar  
6 date motion and submitted a supplemental declaration in  
7 support of the motion for an extension that was submitted on  
8 Ma 20th of this year, and it's found at Docket No. 1179.

9 We have reached out to counsel for the objectors,  
10 and my understanding is that counsel for the Non-Consenting  
11 States and also counsel for the Ad Hoc Committee for  
12 Accountability have no objection to the submission of her  
13 declaration into evidence. And with that, Your Honor, I  
14 would move for the submission of that declaration into  
15 evidence.

16 THE COURT: Okay. Does anyone want to question  
17 Ms. Finegan on her supplemental declaration?

18 MR. TROOP: Your Honor, Andrew Troop from  
19 Pillsbury for the Non-Consenting States. No, we don't plan  
20 on questioning Ms. Finegan.

21 THE COURT: Okay, thank you. All right. Ms.  
22 Finegan is on the line, I see, in looking at the hearing  
23 dashboard. Let me ask you, ma'am, I have your supplemental  
24 declaration here. It's dated May 20th, which is fairly  
25 recently, but knowing that this would be your direct

1 testimony in this matter, is there anything in it that you  
2 wish to change? You may have -- you might be on mute. I'm  
3 not sure. Your -- yeah, there you go. Is there anything --

4 MS. FINEGAN: Apology --

5 THE COURT: -- you would wish to change, Ms.  
6 Finegan?

7 MS. FINEGAN: Apologies, Your Honor. No, the  
8 declaration stands.

9 THE COURT: Okay. Very well, thank you. I may  
10 have questions related to it, but I have a feeling that Mr.  
11 McClammy will be able to answer them. If not, I'll come  
12 back to you for an answer, if I don't get one from him. But  
13 having said that and having reviewed the declaration, I will  
14 admit it into evidence as Ms. Finegan's direct testimony.  
15 And, of course, I also have her declaration from January  
16 30th of this year, in support of the original bar date  
17 motion, which was ultimately granted in somewhat modified  
18 form in early February as well as her testimony at the  
19 hearing on the bar date motion, which I've also re-reviewed.

20 So, that doesn't need to be admitted again. It's  
21 already part of the record, but the supplemental declaration  
22 is now admitted. So, you can go ahead, Mr. McClammy, with  
23 the rest of your presentation.

24 MR. MCCLAMMY: Thank you, Your Honor. Turning  
25 first, with respect to the Ad Hoc Group of Individual

1 Victims, one of the things that we discussed with them in  
2 connection with their submitting a statement in support of  
3 the extension of the bar date, with making sure that's -- we  
4 made clear for the record that, although we believe that  
5 cause exists here to extend the bar date for a limited 30  
6 days, these Debtors do agree with some of the points that  
7 are made in the statement of support submitted by the Ad Hoc  
8 Group of Individual Victims, in particular, that potential  
9 claimants, including individuals, should not delay filing a  
10 claim simply because there is an extension.

11 Extending the bar date here is not intended as an  
12 open invitation from -- for potential claimants to delay  
13 such a filing. Rather, we see this extension, which is  
14 being requested under unprecedented circumstances, as being  
15 meant as an accommodation to those who may be having or  
16 experiencing difficulties in light of COVID-19 in completing  
17 the claims filing process. Notice of the bar date extension  
18 will be provided as set forth in the supplemental  
19 declaration of Ms. Finegan so that the claimants are aware  
20 of the extended bar date, and that a failure to submit a  
21 claim by that extended date will mean that such a claim  
22 could be subject to being barred or being disallowed.

23 However, as noted by the Ad Hoc Group of  
24 Individual Victims, there is, in fact, a possibility that  
25 even with all the notice that has been provided and with the

1 extension of the bar date, that there may be claimants that  
2 seek to file claims under Bankruptcy Rule 9006 on the basis  
3 of excusable neglect. If Debtors will endeavor to give  
4 appropriate consideration to late filing claimants who  
5 affirm that they did not receive actual notice and/or who  
6 believe that their particular circumstances justify their  
7 failure to comply with the bar date, including hardships  
8 occasioned by COVID-19.

9 We believe that that provides some important  
10 context to keep in mind when considering the objections that  
11 seek 90 days or longer extensions to the bar date. With  
12 that, I will turn now to the --

13 THE COURT: Well, can I -- let me jump in here,  
14 and I think I should, just to make my view clear, and I  
15 think it's consistent with the law. A bar date is a very  
16 important event in a Chapter 11 case, including these cases.  
17 As the courts say, it's not just a mere procedural gauntlet.  
18 It really is a key deadline for asserting one's claims in  
19 the case.

20 The Second Circuit, in fact, in its own words, has  
21 taken a hard line in applying a bar date deadline and said  
22 that if compliance with the bar date is within the control  
23 of the party who missed it, it's a very rare case where the  
24 bar date deadline would be extended. So, I think it is  
25 important to note that it is an important deadline that

1 needs to be complied with. If someone is, heaven forbid, in  
2 the hospital or for some other reason unable not because of  
3 their neglect or a legitimate -- for a legitimate excuse,  
4 not to file a claim by the bar date, then on motion by them,  
5 Courts extend it.

6 But the Courts look at those requests carefully  
7 and, as I said, generally unless there's a good reason why  
8 the deadline could not be complied with, the request for an  
9 extension is normally denied, and that might particularly be  
10 the case when there has been a lengthy period, such as  
11 provided for here. So, while it is clear that there may be  
12 exceptions, and the Supreme Court has recognized that in the  
13 Pioneer case and Bankruptcy Rules recognize it in Rule 9006,  
14 those exceptions are limited.

15 So, people should definitely not wait until the  
16 last minute under the assumption that, well, if they miss it  
17 by a day or two, it'll be okay. They should file their  
18 claim promptly, before the last minute, to assure themselves  
19 that it can actually be recognized as a claim in the case.

20 MR. MCCLAMMY: Thank you, Your Honor. Very much  
21 appreciated and completely agree with the Court's statement  
22 on -- in that regard, and we think that that will be very  
23 helpful to the process going forward, to have the claims in  
24 as soon as they can be filed.

25 THE COURT: Let me say one other thing. There are

1 a great deal of potential -- a great number of potential  
2 claimants here who are not entitled to individual notice,  
3 i.e., a letter to them that would say, you have until X date  
4 to file your proof of claim.

5 That is because the Debtors' product here was in  
6 very wide circulation and the parties, and ultimately, the  
7 Court concluded that individualized notice to anyone who was  
8 prescribed OxyContin or some other product by the Debtors  
9 that would give rise, potentially, to a claim, would not be  
10 required on an individual basis, but rather through the  
11 extensive notice program that the Debtors proposed, that  
12 with some changes, I approved.

13 So, you should not expect, as a claimant, to be  
14 getting, necessarily, an individual notice or letter. If  
15 you see an advertisement on TV or online or a billboard,  
16 that applies to you, and you need to, therefore, abide by  
17 the deadline. The deadline will be running regardless  
18 whether you got individualized notice, i.e., a letter to you  
19 specifically or not.

20 There may be exceptions for some people who, if  
21 they can show that the Debtor actually knew you,  
22 particularly, would have a claim or would be reasonably  
23 knowable to the Debtor, but it's not a good idea to rely on  
24 those exceptions, because, again, the Courts narrowly  
25 construe bar date or requests for relief from the bar date.

1 So, when you see an advertisement or a billboard or a notice  
2 on YouTube or in a blog, follow up and file the claim by the  
3 deadline.

4 MR. MCCLAMMY: Thank you, Your Honor. With that,  
5 I'd like to move to the Non-Consenting States objection to a  
6 30-day extension. The Non-Consenting States, I see, it  
7 really failed to demonstrate why anything more than a one-  
8 time, 30-day extension of the general bar date would be  
9 reasonable here, or satisfy the cause standard. And  
10 although the Non-Consenting States correctly note that the  
11 Debtors' supplemental notice plan was developed prior to  
12 COVID-19, it seems to me that they failed to appreciate the  
13 that the supplemental notice plan is not static in nature  
14 and, in fact, has been adjusted and optimized in response to  
15 COVID-19.

16 For example, if you're looking at the supplemental  
17 Finegan declaration, Paragraph 15, it notes that in response  
18 to COVID-19, Prime Clerk adjusted TV commercials to air  
19 during day parts and on networks where research has shown  
20 that 35 increase -- a 35 percent increase in viewership, in  
21 general, increased national TV spots, and streaming video  
22 ads in response to movie theater closures, and the fact that  
23 we mailed a two-page full color summary flier of the bar  
24 date notice to 178 mobile health teams for distribution to  
25 replace the planned boots-on-the-ground approach.

1           Moreover, as previously discussed, the Debtors'  
2       claims filing process includes mechanisms that safeguard  
3       against potential impacts of COVID-19 and impact it could  
4       have had on the process. As I mentioned, the proof of claim  
5       forms can be received and filed by mail. The filing of a  
6       proof of claim form does not require access to medical  
7       records. Indeed, this was a specifically negotiated and  
8       much discussed point, including with the Non-Consenting  
9       States Group in advance of the filing of the original bar  
10      date motion, that supporting documentation is not an  
11      absolute requirement.

12           It may be needed at some time and even demanded at  
13      some time later, but is not a requirement before claimants  
14      file their proof of claim. And, indeed, claimants do not  
15      need specific personnel or even an attorney to file a claim.  
16      We believe the claim forms are straightforward, and also, it  
17      was noted in our claims form process, that the failure to  
18      answer a question, in and of itself, will not necessarily  
19      result in the denial of a claim.

20           It's also important to note that in arguing that  
21      the Debtors can extend the general bar date by 90 days with,  
22      in their view, "only" an additional \$1.4 million above the  
23      Debtors' estimate of \$700,000 for the direct costs of the  
24      extended notice program, that the Non-Consenting States  
25      overlook the soft and the hard costs that would certain run



1 into the tens of millions of dollars if these cases are  
2 delayed, and for those reasons, Your Honor, we believe that  
3 the Non-Consenting States Group's objections should be  
4 overruled.

5 With respect to the Ad Hoc Committee of  
6 Accountability --

7 THE COURT: Could -- I'm sorry, can I interrupt  
8 you on this? And I know I'll be hearing from Mr. Troop in  
9 due course, but I had some questions for you on the 90-day  
10 alternative.

11 At least one of the pleadings in support of the  
12 Debtors' motion, albeit in somewhat reluctant support,  
13 states that the Debtors are seeking or planning on filing a  
14 Chapter 11 plan this fall, which could be as early as the  
15 end of September or later in the fall, but that's the  
16 Debtors' goal and that it is argued -- argues for not having  
17 a bar date extension to the end of September.

18 I didn't see anything to that effect, although,  
19 maybe I just missed it, in the Debtors' own pleadings. Do  
20 the Debtors have -- and this is not something written in  
21 stone, but did the Debtors have a goal as to when they would  
22 be filing a plan in this case?

23 MR. MCCLAMMY: Your Honor --

24 MR. HUEBNER: Your Honor, with Mr. McClammy's  
25 consent, I'll jump in. We are reluctant, frankly, in an

1 open forum and in our pleadings to set forth exactly what  
2 our multi-tracks or plans and thoughts and calendars are.  
3 It is a complicated case. The mediation is a complicated  
4 thing that is proceeding alongside the bankruptcy process,  
5 as are other major initiatives. Our goal is to get this  
6 company out of Chapter 11 as soon as humanly possible and to  
7 turn off all the professionals and send everybody home and  
8 give the money out to the stakeholders and to the people who  
9 need it.

10 We want to file a plan at the earliest possible  
11 opportunity. Several things clearly have to happen before  
12 that is possible. If we filed a plan tomorrow with the  
13 mediation midstream, other things unresolved, we think in  
14 this case that would be very counterproductive. There are  
15 some cases in which Debtors file plans that have the support  
16 of no one, just to get balls rolling.

17 From where we sit right now, on June 3rd, this is  
18 not that case at this time. Do we hope that a plan is  
19 absolutely viable sometime in the next few months?  
20 Absolutely. Which month of fall, is there a dream of  
21 something a little earlier, is there a fear of something a  
22 little later? Sure. But as each thing gets pushed out,  
23 take the probability that this entire case and the tens of  
24 millions of dollars of risk and business evaporation loss  
25 and known cost, it makes it much more of a certainty that

1 those will be incurred and the money will not go where we  
2 need it.

3 So, I apologize for not saying something as simple  
4 as, oh, Your Honor, first time ever, you missed something.  
5 Page 7, Footnote 6, we said we're to file a plan between  
6 August 15th and September 30th. There is no such footnote,  
7 because we don't think it's appropriate to lay something  
8 like that out just yet. But, given that we're now in the  
9 beginning of June and we have a bunch of rows left to hoe,  
10 there is certainly a hope, and more than a hope, that we  
11 could be doing something in that general landing zone.

12 I would prefer not to be more specific than that,  
13 unless the Court requires it.

14 THE COURT: Okay, that's fine. And then I had one  
15 other question. I'm aware, although I don't think there's a  
16 reported decision on this, of one other fairly recent case  
17 where a bar date was extended, or at least there was an  
18 additional major effort to get claims in, in a mass tort  
19 context, and that was the PG&E case. That was prompted by a  
20 perception that simply no one or very few people were filing  
21 claims and that there might be something wrong with the  
22 notice program that was associated with the bar date for  
23 those tort -- potential tort claimants.

24 I did not see in the pleadings, except in one  
25 letter which was filed fairly early in May, any contention

1 that the anticipated number of claims being filed is  
2 actually much lower -- I'm sorry, the number of claims  
3 actually filed by individuals is much lower than was  
4 anticipated.

5 Now, I appreciate, we're only at June 3, and  
6 probably the data on the claims dates back to last week,  
7 which is still more than a month before the end of the  
8 current bar date period, but is there a perception on the  
9 Debtors' part, maybe either Mr. McClammy or Ms. Finegan can  
10 answer this, that the claims that were anticipated actually  
11 greatly exceed the numbers that are being filed to date?

12 MR. MCCLAMMY: Your Honor, Jim McClammy. In  
13 response to that, there isn't anything that we've seen to  
14 suggest that there is a -- that there was an issue with the  
15 noticing, nothing that's bearing itself out in the number of  
16 claims being filed, the number of hits to the website, and  
17 the number of page views to the website as set forth in Ms.  
18 Finegan's declaration. So, there isn't anything along those  
19 lines.

20 It's really occasioned by trying to find the right  
21 balance in light of the perception of difficulties that  
22 people may be having as a result of COVID-19 and how that  
23 may be impacting the schedules and finding the right  
24 balance, cost-wise, between saying no extension and,  
25 perhaps, having to deal with a larger number of people

1 filing motions, to file late claims, or extending the bar  
2 date for a short period of time to further strengthen the,  
3 what we think is a successful program.

4 THE COURT: Okay. All right.

5 MR. MCCLAMMY: With that, Your Honor, perhaps  
6 before ceding the podium, I'd like to just finish up by  
7 addressing briefly the Ad Hoc Committee on Accountability  
8 and their assertions.

9 THE COURT: Sure.

10 MR. MCCLAMMY: So, as the Court noted, letters are  
11 not going out to individual claimants, everyone that has  
12 been prescribed a Purdue opioid or Purdue product, and that  
13 was made after considering the substantial cost, time, and  
14 effort that would be involved in undertaking such an  
15 endeavor. And indeed, the claims discussed by the  
16 accountability group are really no different than any of the  
17 other opioid-based claims in these cases, all of which,  
18 really, in one form or another, assert that some Purdue  
19 marketing effort or other created an environment in which  
20 more opioids were prescribed.

21 The argument that they're making, in many ways,  
22 proves too much, and if you were to follow the logic of the  
23 AHCA, the Ad Hoc Committee on Accountability, the Debtors  
24 would need to seek out and obtain personal contact  
25 information for all such potential claimants from third

1 parties and provide direct notice to all members of the  
2 public that had received a prescription for a Purdue opioid.

3 We believe that, based on the already substantial  
4 cost of the noticing in these case, the alternative direct  
5 noticing efforts would have undoubtedly depleted the  
6 substantial portion of the value of the Debtors' estates and  
7 that doing so would have also increased the amount of time  
8 it would've taken to have the notice program run its course.

9 In developing the notice strategy, the Debtors  
10 considered how best to reach this multitude of potential  
11 claimants, which we do not believe all of them are, in fact,  
12 known claimants, nor do we believe that all of them,  
13 necessarily, have potential claims, and we quickly realized  
14 that attempting such a scorched earth search to obtain the  
15 name and address information, some of which may no longer be  
16 accurate, of these individuals, was simply not feasible for  
17 a number of reasons, including that some of this information  
18 is protected by HIPAA and that the requests for records that  
19 would need to be sought and negotiated through means such as  
20 protective orders and subpoenas, and the potential  
21 litigation over all of that, would've come at a great  
22 expense and delay.

23 And such efforts to provide actual written notice  
24 would have been impractical and costly and, as I mentioned,  
25 cause undue delay to these Chapter 11 cases. So, based on

1 the above, it became clear that such persons are, in fact,  
2 the very definition of unknown claimants because their  
3 identities were not known or reasonably ascertainable by the  
4 Debtors, and that information with respect to such claimants  
5 were not within the possession of the Debtors or in their  
6 books and records.

7 Indeed, after acknowledging that the actual  
8 written notice was only -- not only not legally required for  
9 these unknown claimants, but also entirely impractical. The  
10 Debtors and Prime Clerk, after consulting with key  
11 constituencies in these cases, including the Creditors  
12 Committee and other ad hoc groups, developed a supplemental  
13 noticing plan that, as the Court has noted, is really far  
14 reaching and is designed to reach 95 percent of the U.S.  
15 adult population within average times of -- fixed times and  
16 frequency and over 80 percent of the Canadian adult  
17 population on an average of three times and is, in fact, on  
18 track to exceed those targets.

19 We also believe that the cases relied upon by the  
20 Committee on Accountability actually support the Debtors'  
21 decision to provide notice to potential claimant who are not  
22 in the Debtors' books and records through that supplemental  
23 notice plan. Those case, particularly, In RE: Motors  
24 Liquidation case and the In RE: TK Holdings case really  
25 stand for the general proposition that fashioning adequate

1 notice will depend on the circumstances of the particular  
2 case and, in some cases, perhaps more than examination of a  
3 Debtor's books and records may be required in order to  
4 satisfy the reasonable ascertainable standard.

5 But in neither of those case is there any  
6 suggestion that that was something that would need to be  
7 undertaken here. In fact, if you look at something like In  
8 RE: Motors Liquidation Corp. at 2015 Bankruptcy Lexus 44,  
9 45, you see the Court there noted that efforts beyond just  
10 looking at the books and records are generally not required.

11 And if you look at the TK Holdings case, the  
12 Debtors there sought information from a third party and its  
13 subsidiary, and eventually the California Department of  
14 Motor Vehicles, but that was for contact information  
15 contained in the registration records for certain potential  
16 claimants in those cases, so it was very particularized and  
17 not something that, I think, can be applied here where we  
18 would be looking at the logic of what they're asking to be  
19 simply to extend notice to really every single recipient of  
20 a prescription of a Purdue opioid, which, as this Court has  
21 determined, is unworkable under the circumstances.

22 So, for those reasons, Your Honor, the Debtors,  
23 being aware of the impact of the ongoing COVID-19 pandemic,  
24 and taking into consideration the various views of the  
25 creditor constituencies, we would request that the Court



1 enter an order extending the bar date for a limited, one-  
2 time extension of 30 days. Unless Your Honor has any  
3 questions, I will cede the podium to Mr. Troop and reserve  
4 the right to respond on rebuttal.

5 THE COURT: Okay.

6 MR. TROOP: Thank you, Your Honor. It's Andrew  
7 Troop from Pillsbury for the Non-Consenting States. Can I  
8 proceed?

9 THE COURT: Yes, good morning.

10 MR. TROOP: Good morning, Your Honor. Hopefully,  
11 everyone can hear me. I join in Mr. Huebner's thoughts for  
12 everyone in light of the disruption to our lives and  
13 people's lives as a result of COVID-19. The world is a very  
14 different place than when you entered the bar date order on  
15 February 3rd.

16 Your Honor, I want to be as focused as I can here,  
17 so bear with me if I take long pauses as I'm reading over my  
18 notes from what's been said so far today. First, Your  
19 Honor, I do want to note that I think that everyone,  
20 reluctantly or not, who's spoken in connection with or filed  
21 pleadings in connection with the extension of the bar date  
22 has acknowledged the unprecedented circumstances in which we  
23 find ourselves and that those unprecedented circumstances  
24 have, notwithstanding the breadth and scope of the notice,  
25 supplemental notice program enacted by the Debtors, guided

1 everyone to acknowledge that accommodations need to be  
2 reached.

3 And in that regard, Your Honor, let me say  
4 clearly, that the Debtors decision to file the motion where  
5 the standard before you in deciding whether to extend the  
6 bar date is for cause and not for excusable neglect, was not  
7 lost, at least, on me. If the standard were excusable  
8 neglect after the bar date, as you note, your ability to  
9 react to provide relief is extremely circumscribed by Second  
10 Circuit and, frankly, Supreme Court precedent, and the issue  
11 that you would need to be, as I read the cases, focused on  
12 is, really, the issue -- are many of the issues that have  
13 been discussed, the scope and breadth of notice.

14 But we find ourselves in a situation where the  
15 scope and breadth of notice is only part of the analysis  
16 that I think the Court needs to undertake in determining  
17 when and for how long to extend the bar date for cause,  
18 because it's not the scope of notice here that's at issue.  
19 It is how current circumstances have impacted or may impact  
20 the ability, willingness, focus of parties to respond.

21 Your Honor, there's been some suggestion in some  
22 of the pleadings as to why the Non-Consenting States have  
23 taken up this torch, and while the pleadings acknowledge  
24 that states have been impacted, as well, by COVID-19,  
25 they've been impacted in terms of their budgets, their own

1 internal restructuring, the fact that the health care  
2 workers at the state who are significantly involved in this  
3 case are also the ones with primary responsibility for  
4 responding to COVID-19.

5 The impact of COVID-19 on Non-Consenting States  
6 has been disproportionally high. According to the  
7 Washington Post yesterday, 104,755 people have died from  
8 COVID-19. Nearly 80,000 of those people, more than 75  
9 percent, are in Non-Consenting States. The impact, here, is  
10 far and wide, and Your Honor, it's frankly farther and wider  
11 because of events over the last week.

12 Who would've thought we would've woken up this  
13 morning to New York Times headlines that combat troops are  
14 stationed outside of Washington, D.C., that National  
15 Guardsmen are in many major cities, that Secretaries of  
16 State's Offices were closed yesterday across the country?

17 These facts require an additional yard, Your  
18 Honor. They require that no one -- no one. I can't say no  
19 one, Your Honor. They require that the likelihood that  
20 someone will have to come before you and ask for permission  
21 to file a late filed claim, based on the excusable neglect  
22 standard, is minimized to the greatest extent possible.  
23 And, Your Honor, we've already taken this into account in  
24 connection with other matters in this case.

25 Your Honor, you may recall at a hearing before you

1 on May 1st, believe it was Mr. Hurley discussing certain  
2 discovery disputes before you, and one of those involved an  
3 individual named Mr. Ives who is a Sackler-related party  
4 where Mr. Hurley reported that Mr. Ives was unable to  
5 respond to discovery requests because of what's been  
6 happening with COVID-19.

7 And in response to that, with respect to discovery  
8 requests that have been outstanding since early March, the  
9 Court gave parties until September 1st to respond to  
10 discovery, a significant increase over the -- much more than  
11 parties in interest wanted in terms of responding to  
12 document requests that are critical to the ability to -- for  
13 this case to proceed. I'll come back to that in just a  
14 second, Your Honor.

15 So in sum, Your Honor, we're here because the  
16 circumstances are different. The standard before you is not  
17 excusable neglect and the world is a very different place  
18 without -- and without making any overly political statement  
19 with regard to it, it's in a worse place than it was on  
20 February 3rd. The major -- so it seems, Your Honor, that  
21 we're not arguing about an extension amongst most of the  
22 parties, the Ad Hoc Committee notwithstanding.

23 We're really talking about how long, and that the  
24 arguments provided in response to -- I'm sorry, one other  
25 issue, Your Honor. You asked a question about whether --

1       how proofs of claim were coming in against estimates. We  
2       don't know what the estimates were that the Debtors had or  
3       that Prime Clerk worked for them, and admittedly, Your  
4       Honor, this is anecdotal, but someone in this case said to  
5       me, Troop, if we extend the bar date, that could be  
6       thousands and thousands of more claims filed.

7               And I thought to myself at the time, doesn't that  
8       just prove the point? Doesn't that just prove the point?  
9       And, Your Honor, even if you apply the --

10              THE COURT: Well, except it's not proof. It's not  
11       proof. It's --

12              MR. TROOP: I --

13              THE COURT: -- hearsay, so --

14              MR. TROOP: Your Honor, and I didn't -- I was very  
15       clear about that.

16              THE COURT: Yeah, I know, but maybe people --

17              MR. TROOP: I think --

18              THE COURT: -- who are not lawyers are not, so I  
19       want to make it clear that that's not in any way evidence of  
20       anything.

21              MR. TROOP: But, Your Honor, we live in a world  
22       where you can't gather evidence about the impact. You can't  
23       go out and interview people. You can't go door to door and  
24       do a survey.

25              THE COURT: Well, but you can --

1 MR. TROOP: You have --

2 THE COURT: You can't -- but you can look, as Ms.  
3 Finegan did, at visits to the claims website and you can  
4 look at the claims that have been filed to date and see  
5 whether they are, as one would anticipate, or whether  
6 they're dramatically lower. That's just --

7 MR. TROOP: And --

8 THE COURT: That is evidence.

9 MR. TROOP: And, Your Honor, I don't think there's  
10 evidence on that, either.

11 THE COURT: Well, I asked the question. I was  
12 told no, they're not dramatically lower, by the --

13 MR. TROOP: By the Debtors' lawyer.

14 THE COURT: Well, I --

15 MR. TROOP: Right? He's not aware of it --

16 THE COURT: Ms. Finegan, you heard my question of  
17 Mr. McClammy. Do you disagree with his answer? I think  
18 you're going to have to unmute yourself again, Ms. Finegan.  
19 So, Ms. Finegan, do you disagree with Mr. McClammy's answer,  
20 which was, it does not appear to the Debtors that the claims  
21 that have been filed to date are materially lower than would  
22 be anticipated as of today's date or as of last week?

23 MS. FINEGAN: Your Honor, I agree with Mr.  
24 McClammy.

25 THE COURT: Okay. Now, I appreciate --

1 MR. TROOP: Then, Your Honor --

2 THE COURT: -- let me --

3 MR. TROOP: -- I --

4 THE COURT: I don't want to leave it at that, Mr.  
5 Troop, because I also appreciate, of course, that we're  
6 talking about June 3 and probably looking at claims from  
7 last Friday, the end of May, and the bar date, as currently  
8 set, is June 30 and there's always a large number of claims  
9 that are filed shortly before the bar date. Not -- you  
10 know, people, human nature being what it is, people wait  
11 until the last minutes.

12 So, I'm not sure how conclusive that evidence is,  
13 but at least it's evidence, and I would be approaching this  
14 very differently if this were a PG&E situation where people  
15 are scratching their heads why there aren't as many claims  
16 being filed as one would think.

17 MR. TROOP: And, Your Honor, I therefore, again,  
18 commend everyone for bringing this to you sooner rather than  
19 later, recognizing, as I do agree with you, that the numbers  
20 here will be much clearer on June 28th than they are today.  
21 By June 28th, I think, everyone would agree, it would be a  
22 very different effort in time to extend the bar date.

23 Your Honor, I may have a question, now, for Ms.  
24 Finegan in light of your question, but I want to think about  
25 it just a minute, of I may, and come back to it.

1 THE COURT: Okay.

2 MR. TROOP: Your Honor, the other, I would say,  
3 the other most significant argument against a longer  
4 extension, which is, I think, what you were getting at in  
5 terms of asking when plan might be filed, is this fall --  
6 whether it would be this fall, is whether extending the bar  
7 date for 90 days would, in fact, delay the case. And, Your  
8 Honor, I think not. I mean, Mr. Huebner accurately  
9 described the efforts of the parties engaged in mediation to  
10 address the primary issue that was set forth for mediation,  
11 which is allocation and, like Mr. Huebner, I am hesitant to  
12 share with you details by -- other than to confirm everyone  
13 is working very hard.

14 The public side creditors are making substantial  
15 progress. There were 25-ish, I think, maybe 20-ish days of  
16 mediation set out for people in June, and while, again, this  
17 is a changed circumstance, when the mediation was authorized  
18 by the Court -- and the point of that, Your Honor, is the  
19 mediation is moving along but taking longer than people  
20 anticipated. Think everyone -- I think the Court had hoped  
21 that mediation would be concluded now, on this primary  
22 issue, and you've urged us all to move expeditiously, but I  
23 note that had that schedule, which maybe I expressed some  
24 skepticism about, but had that schedule held, the bar date  
25 would've come in after the mediation concluded.



1           So, the -- now tying, as some do, the need to get  
2       proofs of claim in with the mediation, is a red herring,  
3       Your Honor. It's a red herring. And in terms of moving the  
4       case forward, Your Honor, it's similarly a red herring.  
5       There are, as alluded to, many issues that need to be  
6       resolved or people need to try to resolve before filing or  
7       abandoning a consensual plan is decided.

8           It's -- I've alluded already, Your Honor, to the  
9       Sackler discovery and its timing. Your Honor, I understood  
10      you to order that Sackler discovery be concluded by  
11      September 1st. That's much more than 30 days from now, and  
12      it will take months, I think, at least, but months to  
13      analyze all those documents, confirm the Sackler's roles and  
14      finances, and be able to evaluate and make reasoned  
15      decisions on the plan with releases that Mr. Huebner  
16      confirmed the Debtors intend to pursue.

17           Similarly, Your Honor, one of the parties that is  
18      not compulsory -- is not compelled to engage in the  
19      mediation is the United States and the Department of  
20      Justice. And the claims that the United States will assert,  
21      may assert, it's demanded treatment in this case, and, Your  
22      Honor, there's no secret, I think, here. I think last month  
23      the Debtors' special counsel, Skadden, charged the estate \$2  
24      million or so in their last interim fee application.

25           And their job is exclusively to deal with DOJ and

1 DOJ issues. Those are all issues that are going to need to  
2 be hammered down, nailed down, and resolved before a plan  
3 can get presented to you for confirmation. And those are  
4 things beyond my control, Your Honor, but they are things  
5 that are going to have to be considered. So, nothing in  
6 this case, in light of these issues, will be adversely  
7 affected by a 90-day extension as opposed to a 30-day  
8 extension.

9 In contrast, aside from enhancing, if not, in  
10 actuality, the perception of the fairness of the process, in  
11 light of changed circumstances, is clear. And the costs of  
12 not doing so are less predictable than the costs of doing  
13 so. No one can predict, Your Honor, whether now, 30 days  
14 from now, or 90 days from now. Readily admit that, that  
15 late claims will get filed in this case.

16 But I think as you noted, Your Honor, the longer  
17 the time, the more effort that's made to permit claims to be  
18 filed, probably -- and I admit I have no evidence on this,  
19 Your Honor, but we've all done this for a long time,  
20 minimizes the likelihood that more claim -- more late-filed  
21 claims will be filed than with a sooner bar date. And I  
22 think, frankly, Your Honor, it will make it easier for  
23 everyone to address it the issues by the third -- the Second  
24 Circuit when it comes to dealing with late filed claims.

25 So in sum, Your Honor, I think that the issues

1 here are simply not whether, but how long to extend the bar  
2 date, whether the intended benefits of extending the bar  
3 date would be better achieved with a longer extension than a  
4 shorter extension, in light of the fact that it's not the  
5 scope of notice that people are fighting about, but people's  
6 ability to respond, and whether, in fact, there will be  
7 demonstrable delay in this case as a result, which there  
8 will not be, Your Honor.

9 In fact, I don't think anyone thinks that having  
10 proofs of claims on file are necessary for the mediation  
11 process to continue because, as I noted, it was never  
12 contemplated they would be on file as a prerequisite to  
13 that.

14 Your Honor, I'm going to skip my question to Ms.  
15 Finegan.

16 THE COURT: Okay.

17 MR. TROOP: Okay? Any questions for me, Your  
18 Honor?

19 THE COURT: No. No, thanks.

20 MR. HUEBNER: So, Your Honor, it's Marshall  
21 Huebner. In terms of the, sort of, continued order of  
22 operations, I think it probably makes sense -- again,  
23 there's no magic to this, but I think that while, sort of,  
24 Mr. Troop's theory of the longer bar date is right before  
25 us, I -- the one other party that I believe has counsel, I

1 believe it's called the Ad Hoc Committee of Accountability  
2 which is a new group. I think it's actually five  
3 individuals who have retained counsel, and if counsel is on  
4 the line, we certainly would cede the podium to them to make  
5 whatever remarks they believe appropriate.

6 THE COURT: Okay.

7 MR. RACHMUTH: Thank you. May I, Your Honor?

8 THE COURT: Yes, go ahead.

9 MR. RACHMUTH: -- Paul Rachmuth on -- this is Paul  
10 Rachmuth on behalf of the Ad Hoc Committee on Accountability  
11 from Eisenberg and Baum. Our focus in this case is much  
12 narrower than the other committees that have spoken before  
13 you, and it is, as the title of our group suggests, it is to  
14 increase the accountability of the Debtor in the process.

15 The objection that we filed is premised on earlier  
16 this year, there was a company, Practice Fusion, which is an  
17 electronic medical records company, entered into a deferred  
18 prosecution agreement with Vermont Attorney General's  
19 Office.

20 THE COURT: January 27th, right?

21 MR. RACHMUTH: Yes, Your Honor. This company pled  
22 guilty to receiving illegal kickback from a drug  
23 manufacturer, which many have identified at Purdue Pharma,  
24 and I don't believe there can be any doubt that the party  
25 named is Purdue Pharma. Several of the exhibits used even

1 have Purdue Pharma's name on them. The illegality was the  
2 creation of a scheme to target patients in -- by creating a  
3 medical billing system that influenced doctors to prescribe  
4 extended-release opioids.

5 Accordingly, the victims of this scheme that was  
6 perpetrated by the Debtor here were those patients that were  
7 targeted. And they're the victims, whether or not they  
8 received OxyContin or another Purdue Pharma drug or a third  
9 party's drug. So the issue we have is that unless they are  
10 -- receive notice that they are a claimant in this case,  
11 specifically informing them that they were injured by Purdue  
12 Pharma because of this illegal scheme, even if they were to  
13 receive a hand-delivered note -- notice of the bar date,  
14 they would not know to file a claim.

15 So, there is a database with the names of these  
16 parties in it that's at Practice Fusion's custody and  
17 control which can be accessed, which has all the relevant  
18 information. It is a known set of names and the Debtor, if  
19 it so chooses or, if necessary, by 2004 from a third party,  
20 including us, could get those specific names of the parties  
21 that were targeted by the Debtor and are victims of this  
22 scheme.

23 We're asking for two things. One, that the Debtor  
24 provide these parties notice, and a simple notice that  
25 Purdue Pharma has filed bankruptcy and if you've been

1 injured by Purdue Pharma you have a claim, that notice isn't  
2 sufficient because unless someone is told that Purdue Pharma  
3 was behind this scheme, that even if they received a third-  
4 party's opioids, they're still a victim of this scheme and  
5 therefore are a potential creditor, unless that information  
6 if provided, then a notice is insufficient.

7 And because of the time that we're -- to get the  
8 names from Practice Fusion and construct this very narrow  
9 focused, directed notice campaign, the 90 days would be  
10 needed, not the 30 days. And I believe that this benefits  
11 the entire estate, not just this one narrow group of  
12 creditors, because as both the Debtor and Mr. Troop have  
13 pointed out, the hurdles for a party to overcome filing a  
14 late-filed claim are high.

15 However, if that party can show they never knew  
16 that they had a claim before the bar date, I expect Your  
17 Honor would grant their claim. In other words, there is a  
18 whole class of creditors here, who would have an excusable  
19 neglect to have late-filed claims. So whether it is 90,  
20 120, or 180 days down the line, if a creditor from this  
21 Practice Fusion scheme does file a claim, that could  
22 interrupt the case.

23 However, as Mr. Troop pointed out, this case is  
24 not nearly ready for a consensual plan and the size of the  
25 numerator in this case, the number of creditors, is not

1 really the issue that's going to hold things up. Delaying  
2 90 days to get proper notice to this group of creditors  
3 would not injure the process at all. I realized the  
4 enormity of the issue that's going on in this case. I  
5 understand this is a very small issue in comparison to all  
6 of the major issues that Your Honor is dealing with.

7 I'm asking that this one issue, for this group of  
8 creditors, be addressed appropriately. Thank you.

9 THE COURT: Okay.

10 MR. HUEBNER: So at this point, Your Honor, again,  
11 let me ask, is there anyone else -- there were some other  
12 letter filings with respect to the request for a longer  
13 extension. We're not, obviously, taking a view. We didn't  
14 try to preclude any from speaking or being heard. We're not  
15 asserting any sort of party interest defense, anything like  
16 that.

17 So is there anyone else from the people who are  
18 listed in the agenda letter supporting a 90-day extension  
19 who would like to be heard before I can sort of swing back  
20 to the other stakeholders in the case?

21 MR. TROOP: Your Honor, this is Andrew Troop again  
22 from Pillsbury for the non-consenting states. Your Honor, I  
23 do believe that there was one person who had tried to dial  
24 in but was unable to do so. I'm just sharing that I haven't  
25 heard from anyone else that intend to -- their intent to

1 participate or present today.

2 THE COURT: Okay. Well, I mean, I'm not sure why  
3 they weren't -- aren't able to do so or whether they  
4 contacted the Court. But if no one has anything further to  
5 say in opposition to the motion or, perhaps better put,  
6 seeking a longer extension, then I'm happy to hear from  
7 other parties maybe beginning with the creditors' committee.

8 MR. PREIS: Good morning, Your Honor. Can you  
9 hear me?

10 THE COURT: Yes.

11 MR. PREIS: Good morning. This is Arik Preis from  
12 Akin Gump Strauss Hauer & Feld on behalf of the Official  
13 Committee of Unsecured Creditors. Thank you, Your Honor,  
14 for allowing us to speak this morning on what is really an  
15 important issue in these cases.

16 We filed a statement yesterday setting forth our  
17 position; that's at Docket #1213.

18 THE COURT: Right. I've reviewed that.

19 MR. PREIS: Okay. We included a chart there that  
20 set forth the positions of various parties that filed  
21 pleadings. In setting forth those positions, we tried to  
22 explain the fact that different positions have been taken by  
23 different parties in this case that are, frankly, similarly  
24 situated. In some cases, we actually have the exact same  
25 time of claimant taking a diametrically opposed position on



1 an issue that would appear to affect them in the same way.

2 So I want to be actually a little specific because  
3 our chart, although we tried to hit all the parties that had  
4 filed pleadings, some of the parties that filed the  
5 pleadings actually have multiple groups within their parties  
6 or within their ad hoc group. And I think it's probably  
7 instructive for me to just go through all the different  
8 types of claimants in this case and give you a sense of  
9 where they are. And we feel we're a little bit better  
10 situated than anyone in the case right now to tell you this,  
11 given who sits on our creditors' committee and our  
12 interactions with a lot of the parties in the case.

13 So on the state side, you have the ad hoc group of  
14 consenting group, 23 of them, arguing for no extension, and  
15 the ad hoc group of non-consenting states, I believe there  
16 are 25 of them along with some territories and District of  
17 D.C., arguing for a 90-day extension. On the county and  
18 municipality side, and this is part of the reason I want to  
19 go through this, the PEC and the MDL, which purports to  
20 represent I believe 2,000 or so cities, counties and  
21 municipalities, they're a member of the consenting group  
22 and, therefore, they support no extension. Then you have  
23 the multi-state group, which is comprised of 1500  
24 municipalities representing 60 million people, arguing for a  
25 30-day extension.

1           On the personal injury side, you have letter  
2       requests arguing for a 90-day extension, as you know, and  
3       newly formed ad hoc group of accountability, which you just  
4       heard from, arguing for a 90-day extension for an entirely  
5       different reason. And then an ad hoc group of personal  
6       injury victims, which has been vocal in this case and  
7       purports to speak for 40,000 individual victims, supporting  
8       only a 30-day extension.

9           Then there are a few groups that didn't file  
10      anything -- the ad hoc group of ANS, the ad hoc group of  
11      hospitals and the third-party payors, all of whom are  
12      important players in these cases, did not file pleadings.  
13      Each of them has a representative claimant or two that sits  
14      on the creditors' committee; specifically, the creditors'  
15      committee has a hospital on its committee, West Boca Medical  
16      Center, one mother of an NAS child, one grandfather of an  
17      NAS child, a third-party payor, Blue Cross & Blue Shield  
18      Association, all of whom are on the UCC. And I've been told  
19      that although they didn't file a paper, the NAS ad hoc group  
20      is of the view that if an extension is granted, it would  
21      support a 30-day extension.

22           In addition, there are the Native American tribes.  
23      Although they too did not file their own specific pleading,  
24      some of them are members of the ad hoc group of consenting  
25      parties, which group supported no extension, and some are ex

1 officio members of the UCC.

2 And so, Your Honor, with this amount of difference  
3 of opinions, not on type of claimant lines and not on  
4 private versus public claimant lines, as you've heard  
5 discussed on other issues, and, frankly, not on political  
6 lines, it seems that one really needs to consider what the  
7 various arguments here because one can't simply say X  
8 creditor is saying Y because of how this affects them like  
9 in a normal way case.

10 So some groups, the first issue that remains most  
11 of the groups focus on is that we need to recognize that  
12 opioid victims have been hit hard by the COVID-19 pandemic  
13 for various reasons and, as such, need an extension of bar  
14 date. The ad hoc group of PIs appears in their pleadings to  
15 provide some compelling rationales for how PI victims have  
16 been particularly harmed by COVID-19. Others have argued  
17 that state and local governments or hospitals or third-party  
18 payors have been focused on COVID-19, which indeed we would  
19 want them to be and hope that they are. And as such, we're  
20 not focused on filling out a group claim form.

21 But although it's hard to argue that these types  
22 of positions don't appear to have merit, the consenting  
23 group may have been right when they said there's actually no  
24 hard evidence that any group or individual was, in fact,  
25 adversely affected by COVID-19 in a way that prevented them

1 from receiving notice of the bar date or filling out a proof  
2 of claim form. I think you even said earlier there's no  
3 evidence. All we can say about this issue, at best, is that  
4 it's simply impossible to know for certain which side is  
5 right on this issue.

6 Second, some have seemed to hint that the noticing  
7 program is not going to hit its noticing targets as a result  
8 of COVID-19 process and, as such, an extension is warranted.  
9 But there's no evidence of that either. Jeanne Finegan's  
10 argument -- Miss Finegan presented uncontroverted evidence  
11 about the way the program worked and who it was targeted and  
12 how it has been effective. Some claimants seem to imply  
13 that the noticing program hasn't worked or can't worked  
14 because COVID-19 will result in people being unable to fill  
15 out proof of claim forms. But the truth is, the program is  
16 a noticing program, it's not a file a proof of claim  
17 program, and forms can be filled in online and almost no  
18 documentation is necessary. Indeed, the forms were intended  
19 to be as simple as possible to fill out with different types  
20 of forms for individuals making their forms even easier to  
21 fill out.

22 I would note though on this point, Your Honor,  
23 that earlier, you asked the Debtors or Prime Clerk whether  
24 they have reason to believe that the number of claimants  
25 that have filed claims is less than the amount anticipated,

1 and Miss Finegan and Mr. McClammy answered that no, it's  
2 not. And I noted earlier -- I'm king of guessing here -  
3 that Mr. Troop thought for a second about whether he was  
4 going to cross-examine Miss Finegan and maybe he was going  
5 to ask her about this issue.

6 But I too thought about it because I've never in  
7 all of our discussions with the Debtors ever been told what  
8 the Debtors or Prime Clerk expected as of this time or any  
9 time as far as the number of claims to be filed. Indeed,  
10 that would require some pretty difficult assumptions about  
11 number of claimants, likely amount of claimants who file  
12 claims in mass torts of this unprecedented size and other  
13 factors.

14 But I can assure you, Your Honor, that some groups  
15 have absolutely told their Debtors their view on this. For  
16 example, the NAS ad hoc group has voiced to the Debtors  
17 their view that the number of claimants that have filed NAS  
18 claims is less than the amount they would have anticipated  
19 as of now and has worked with the Debtors in an effort to  
20 modify some of the noticing strategies as it relates to NAS.  
21 For example, they've worked to modify images that are used  
22 online since they're more applicable to the NAS children.

23 At this point, I think the NAS ad hoc group at  
24 best would say that the jury is still out on this issue. I  
25 can't speak for any other group, but I did want to note that

1 in response to something you raised earlier.

2 Third, some would argue that we shouldn't have any  
3 extension because that will in some way impact mediation.  
4 And I found myself agreeing with what Mr. Troop just said  
5 and, indeed, it was in our papers. That argument doesn't  
6 ring true at all. We began discussing mediation in late  
7 February and began formal mediation in early March. The bar  
8 date on March 1st was 120 days away. At that time, no one  
9 objected to mediation or even voiced a view that we should  
10 hold off on mediation because we don't know how many claims  
11 will be in by the bar date and that we can't reach  
12 resolution until we know the number of claims. Meaningful  
13 negotiations were intended to occur starting then, have  
14 occurred and will occur prior to the bar date deadline  
15 whenever it will be.

16 Moreover, and as Mr. Troop also alluded to, but  
17 I'm going to need to fix something he said in a second, we  
18 are in the midst of investigating the claims against the  
19 Sacklers. You are very aware from various discovery  
20 disputes brought to your attention last month, and indeed  
21 yesterday, we submitted another long letter to you of  
22 various discovery issues that have arisen based on what you  
23 ordered 32 days ago.

24 Discovery is likely months away from concluding,  
25 much less having the UCC and the non-consenting states and

1 perhaps others from agreeing to the settlement framework.  
2 Therefore, while we obviously hope and would want the  
3 consensual resolution by early fall, as was indicated  
4 earlier, if not sooner, a lot has to be done before that.

5 And, Your Honor, I just want to correct something  
6 that Mr. Troop earlier mentioned when talking about the  
7 impact that COVID-19 had on getting access to Mr. Ives'  
8 documents. We had offered to meet and confer to reduce the  
9 number of documents offline with Mr. Ives' counsel and that  
10 the deadline should be based on the number of documents  
11 returned. Mr. Ives is still taking the position that his  
12 documents would be due September 1st, and we are asking to  
13 require them by separate letter, and obviously not for this  
14 call for this hearing, to finish by August 1st. But at no  
15 point has anybody ever agreed to a deadline of discovery of  
16 September 1st for anything. As you know, there is a  
17 deadline of July 1st for certain production to be done, but  
18 again, that's not for this call.

19 Finally, in any argument that the bar date  
20 extension should be only for one or a specific type of  
21 claimant are just -- we don't believe are consistent with  
22 fundamental fairness, and I think Mr. McClammy addressed  
23 that earlier on in his comments.

24 Given all these competing positions, Your Honor,  
25 and the arguments we've heard, our initial view, as we

1 explained in our papers, was there should be a surgical  
2 approach for extensions; specifically, if someone or some  
3 institution or some governmental party, indeed, did have a  
4 hardship due to COVID-19 and could not file a claim on time,  
5 then they should file a late claim and submit an affidavit  
6 to that effect, and there would be the need for the Debtor  
7 to give everyone notice that this process was in effect.

8 But as we explained in our papers, requiring  
9 people to go through this verification process and then have  
10 a claims administrator adjudicate, or that the reasons were  
11 indeed legitimate and ensuring that this process was run in  
12 a fair and cost effective manner would have been  
13 impracticable, difficult to negotiate, time consuming to  
14 administer, and may in fact be unfair to those who we were  
15 actually trying to help, so we decided to abandon that  
16 proposal.

17 Therefore, we looked at all the competing  
18 interests, which I went through with you earlier, and the  
19 rationale espoused, and we considered the fact and  
20 circumstances not just of this case, but of the world we  
21 live in and, frankly, notions of fundamental fairness.

22 And honestly, Your Honor, I think it's fair to say  
23 that once one determines that an extension of some sort is  
24 appropriate, determining the length of that extension,  
25 whether it's 15 or 30 or 45 or 60 or 90 days, is frankly



1 simply a matter of what feels right based on what everyone  
2 is arguing and what people are saying as reasons for  
3 extending or not.

4 The UCC is a fiduciary, therefore supports a 30-  
5 day extension, not because it necessarily is a legally right  
6 answer, because frankly we're not sure there is a legally  
7 right answer, but because it strikes the appropriate balance  
8 among all the various positions advanced by all of the  
9 different parties in the case. And perhaps in that way,  
10 it's the legally right answer. Thank you, Your Honor.

11 THE COURT: Okay, thank you.

12 MR. ECKSTEIN: Your Honor, good morning. This is  
13 Kenneth Eckstein of Kramer Levin on behalf of the Ad Hoc  
14 Committee of Consenting States and Local Governments. Would  
15 it be appropriate for me to speak at this point?

16 MR. ECKSTEIN: Sure, go ahead.

17 MR. ECKSTEIN: Thank you, Your Honor. I trust  
18 Your Honor has had an opportunity to read the pleading that  
19 we submitted. I believe that we are standing alone in some  
20 respects in taking the position that there is no cause or  
21 basis in this case for an extension of the bar date. But  
22 let me just briefly summarize some of the points that we've  
23 made and address some of the comments that have been made  
24 this morning.

25 First, Your Honor, I want to echo the comments

1 that have been made by I believe all the speakers in noting  
2 that the members of the ad hoc committee of consenting  
3 states and local governments, and that includes all the  
4 states and all of the cities, counties and municipalities  
5 that sit on the ad hoc committee are keenly focused on the  
6 demands and challenges presented by the COVID-19 crisis.

7 And I'm sure Your Honor can appreciate that the  
8 members of the ad hoc committee, while focusing intensely on  
9 a great deal of constructive activity that has been taking  
10 place in this case over the last 90 days, has been working  
11 almost full time as well on confronting the challenges in  
12 their respective states and municipalities, and I don't  
13 believe that there is any party in this case that is more  
14 aware of the challenges presented by COVID-19 than the ad  
15 hoc committee of consenting states and local governments.

16 Notwithstanding this crisis and that the crisis  
17 clearly is unprecedented, I think as Your Honor has heard  
18 repeatedly from I think again all of the parties, we're  
19 balancing the challenges of the crisis with a very, very  
20 unusual, I would say unique Chapter 11 case, which is at  
21 this point I think heading into it's tenth month, with  
22 tremendous cost and expense for all the constituencies and  
23 where the significant resources that we had hoped were going  
24 to be put into the system have not yet found their way to  
25 start providing relief for the opioid crisis and its

1 victims, and we think those are the balances that have to be  
2 considered here.

3 At the end of the day, Your Honor, we have to  
4 determine whether or not there's cause for an extension of  
5 the bar date. I believe there is uniform recognition that  
6 the bar date that was established and approved by this Court  
7 in this case is a model of a broad and comprehensive bar  
8 date, it was undertaken at massive expense to the estate;  
9 over \$23 million was expended in providing broad and  
10 extensive notice of the bar date in this case in a manner  
11 that I certainly have not encountered in any other case in  
12 which I've been involved.

13 The length of the bar date, even for a mass tort  
14 case, is extremely long, and there has been no suggestion in  
15 the papers or this hearing that there are parties who cannot  
16 file the claim. Every case, whether it's a bar date or a  
17 pleading or a deadline, everybody wants more time and we all  
18 recognize that and it's always more comfortable and it's  
19 easier to have more time. We also, I think, appreciate that  
20 whenever there is a delay or an extension of time, it causes  
21 delay to the case; that is almost axiomatic and that will be  
22 true here as well.

23 We do need to balance. And what I think Your  
24 Honor has before you is the fact that there is a robust and  
25 effective bar date that was put in place, that there is no

1 specific compelling need for more time, that in fact the  
2 evidence demonstrates that the claims are coming in, and the  
3 fact of the matter is we are devoting day in and day out.  
4 The parties in this case are devoting almost their entire  
5 day in certain cases to mediation.

6 It is true, mediation was started before we knew  
7 what the exact amount of the claims were going to be, but we  
8 all recognized that by June 30th, we were going to have the  
9 claims on file. And we appreciated that, while we hoped  
10 mediation would have been done earlier, the fact of the  
11 matter is in a case of this complexity, it's no surprise  
12 that it's ongoing and it's going to continue to be ongoing  
13 for a while. But as Your Honor has heard from Mr. Troop and  
14 from others, progress has been made, and I believe progress  
15 will be continued to be made. And we all must, in this  
16 case, aspire to the filing of a plan as early as possible,  
17 and I don't think anybody would quarrel with the fact that  
18 we should be aspiring to file a plan by the fall of 2020.

19 I appreciate full well, there are many, many  
20 hurdles that could interfere with that goal. So it would  
21 seem obvious to me, Your Honor, and hopefully to the Court,  
22 that creating additional hurdles to show this case down is  
23 exactly what nobody in this case needs. Unfortunately, we  
24 do have a limited amount of resources, and we're working  
25 mightily to figure out what the most effective way is to

1 make those resources available to numerous competing  
2 parties.

3 If one party is going to say we are not yet  
4 prepared to weigh in on what is the appropriate treatment  
5 for our constituency in this case because we don't know the  
6 universe of our claims, that could be a significant  
7 impediment to making the critical necessary progress to  
8 resolving the mediation and getting to the point where we  
9 can file a plan.

10 The ad hoc committee is completely sympathetic  
11 with all of the problems that we're all confronting. And  
12 this position should not be heard as anything other than a  
13 desire to balance the sympathy for the challenges that we're  
14 all dealing with, with the responsibility that we all have  
15 to keep this case moving forward as constructively and  
16 effectively as possible, and each of the parties who have  
17 spoken, I believe, are doing that. But by opening up a key  
18 deadline, as Your Honor has pointed out, the bar date is not  
19 merely an incidental or technical deadline; it is a key  
20 dating item to be able to really make the progress we need  
21 to in this case.

22 In the absence of cause because it's -- maybe it  
23 feels better to give more time, that's not cause in this  
24 case, Your Honor, so we would submit that the right answer  
25 is notwithstanding the fact that it may feel good, we think

1 the Court should conclude that it has put a robust  
2 comprehensive extensive bar date in place where all parties  
3 have received notice.

4 To the extent there are attorneys who want to file  
5 claims, they've had months and months to do so, and there  
6 are very, very simple mechanisms to make sure that the basic  
7 requirement of filing a claim is satisfied; there is no  
8 cause for another 30, 60 or 90 days to do so. To the  
9 contrary, we should be doing everything in our power to keep  
10 this case moving and to not create additional impediments to  
11 delay, all of which is costing this estate millions and  
12 millions of dollars a month that will continue to be  
13 incurred unless we commit ourselves collectively to actually  
14 achieving a resolution that should be in hand.

15 So, Your Honor, we believe that there is no cause  
16 for extending the bar date. We believe that the notice  
17 period in this case is adequate. We believe that the Court  
18 does have the ability, if there are specific exceptions that  
19 surface in the future, to deal with the excusable neglect  
20 standard by applying it to the unique circumstances that we  
21 face right now in this country. And if the facts warrant, I  
22 have no doubt that Your Honor will find an opportunity to  
23 accommodate genuine needs for additional time, and we  
24 believe that the right conclusion in this case is for the  
25 Court's order establishing a June 30 bar date to be

1 maintained.

2 At the conclusion of our pleading, Your Honor, we  
3 did say if the Court nonetheless believes that it is  
4 prepared to open up this bar date, which is a very  
5 significant event for the Court to do in a case of this  
6 size; if the Court is going to nonetheless open up the bar  
7 date, we believe that the appropriate step would be, in that  
8 case, to provide not more than 30 days, make it available to  
9 all parties, and that would be the fallback ruling that we  
10 would recommend in the event the Court believes that there  
11 actually is some need to extend. We appreciate Your Honor's  
12 consideration. Thank you.

13 THE COURT: Okay, thanks.

14 MR. MACLAY: Your Honor, this is Kevin Maclay for  
15 the MSG. May I be heard?

16 THE COURT: Briefly, yes.

17 MR. MACLAY: Thank you, Your Honor, and I will be  
18 brief because I don't want to retread any already applied  
19 ground.

20 THE COURT: Right, and that's the only reason I  
21 suggested it. I think we're probably getting to the point  
22 of diminishing returns on other arguments since I think  
23 we've now covered the gamut of the responses.

24 MR. MACLAY: Thank you, Your Honor, yes, very  
25 briefly. As was noted by counsel for the UCC, my group

1 represents approximately 60 million people, localities  
2 across the country who are on the front lines of both the  
3 opioid and now the Covid crisis. We carefully considered  
4 the Debtors' positions and the evidence presented in support  
5 of those positions, and we concluded that the Debtors'  
6 judgment was correct; that the appropriate balance between  
7 the hardships that have been laid out by some of the letter  
8 writers and then, ultimately, the non-consenting state  
9 group, and the delay to the case that, in our view, will  
10 also inevitably result. If a further extension were  
11 granted, that the 30-day period was the correct period.  
12 Thank you, Your Honor.

13 THE COURT: Okay, thank you. Anyone else? And I  
14 have read all the pleadings on this, so you can be assured  
15 of that.

16 MR. McCLAMMY: Your Honor, it's Jim McClammy for  
17 the Debtors.

18 THE COURT: Well, before you speak, Mr. McClammy,  
19 I had a question for you or maybe Ms. Finegan. The Debtors  
20 budgeted over \$23 million for the bar date notice process,  
21 and as her supplemental declaration states, it's now more  
22 than two-thirds done. My question is, is there some point  
23 of diminishing returns by way of an extension given that a  
24 fair amount of this money has already been spent and you're  
25 not contemplating a lot more; it's just a reference to an



1 extension. I just don't know.

2 In terms of noticing, is there some point by which  
3 the extension goes out far enough so that the message that  
4 you've already spent, you know, more than two-thirds of the  
5 work on has been diluted? I hope that's clear; if not, you  
6 could ask me where it isn't clear.

7 MR. McCLAMMY: Yes. In the first instance, that  
8 may be a question for Ms. Finegan. I'll see if Ms.  
9 Finegan's able to respond.

10 MS. FINEGAN: Your Honor, in response to your  
11 question, while we are two-thirds of the way through the  
12 program's timeline, a majority of the budget has already  
13 been spent and contractually committed. We are currently in  
14 a maintenance level just to keep awareness. So at a very  
15 minimum, the program is running online, social media ads and  
16 display ads on YouTube. We have yet to publish one magazine  
17 title; again, that's coming out on June 12th, which is  
18 "Parents Latina." And then the program is, for the most  
19 part, concluded.

20 THE COURT: Okay. But I guess my question is, a  
21 tremendous amount of work and money has gone in to telling  
22 people that June 30th is the deadline. Is there any logic  
23 to the notion that if you get more than a month or so beyond  
24 that deadline with a new deadline, that the work already  
25 done is vitiated, you know, so that people kind of lose

1       their memory of that ad they saw or that website banner that  
2       they saw, you know, if you go much beyond the time that the  
3       Debtors have said, or does it really not matter?

4               MS. FINEGAN: If I understand your question  
5       correctly, Your Honor, I believe that it is always helpful  
6       for individuals to have a continuous reminder of a message  
7       in front of them. Of course, it's always up to that  
8       individual whether or not that they take action. We are  
9       only 50 percent of the equation, so I believe that it is  
10      helpful to have messages continuously in front of  
11      individuals as reminders.

12             THE COURT: Okay. And isn't it -- there were  
13      estimates given that the extra 30 days that the Debtors were  
14      requesting would cost in hard dollars about \$700,000, and  
15      that 90 days would cost \$2.1 million. Is there a weekly  
16      cost to this; is it that simple that it's X hundred thousand  
17      per week?

18             MS. FINEGAN: Typically, the media contracts are  
19      negotiated on a monthly basis. Certainly, we could work  
20      that out for you. I don't have that easily at my disposal,  
21      but I'm happy to calculate that for Your Honor.

22             THE COURT: But generally, you would negotiate a  
23      month worth of --

24             MS. FINEGAN: Yes, that's correct.

25             THE COURT: I mean, Mr. Preis said -- you know,

1 Mr. Preis threw out numbers like 30 days, 45 days, 60 days,  
2 90 days; all but one of those was on a monthly basis. And I  
3 guess that you're saying that generally speaking, if you're  
4 going to have maintenance, it would be on a monthly basis.

5 MS. FINEGAN: That's generally the case. However,  
6 there have been notice programs that have extended into 45  
7 days, so it can be accomplished most certainly.

8 THE COURT: All right. But you don't have a sense  
9 of what the cost of that would be.

10 MS. FINEGAN: To run the program for 45 days?

11 THE COURT: Yeah.

12 MS. FINEGAN: I do not have that easily at my  
13 fingertips, but I'm happy to gather it for you.

14 THE COURT: Okay. All right, thanks. All right,  
15 so Mr. McClammy, I interrupted you, but go ahead briefly.

16 MR. McCLAMMY: Thank you, Your Honor. Briefly,  
17 Your Honor, I just want to respond to the points raised with  
18 respect to the deferred prosecution agreement by the ad hoc  
19 committee on accountability. I believe Mr. Huebner might  
20 have a couple of additional words as a general rebuttal, if  
21 that's all right.

22 THE COURT: Okay.

23 MR. McCLAMMY: So, Your Honor, with respect to the  
24 arguments raised by the ad hoc committee on accountability  
25 concerning the deferred prosecution agreement, I just

1 reiterate the remarks made in my opening; that those  
2 patients are really not differently situated from the other  
3 potential claimants in this case whose contact information  
4 the Debtors do not have access to. And, you know, the fact  
5 that they may have had a contract with a party that was  
6 subject to the deferred prosecution agreement does not  
7 change that.

8 You know, in fact, you know, it's been very  
9 public, the accusations against Purdue, including claims of  
10 conspiracy. So in addition to the fact that the deferred  
11 prosecution agreement was in January, you know, it is not as  
12 though those that believe that they have claims tied to  
13 opioid use would have no basis for considering whether or  
14 not they had a claim against Purdue based upon information  
15 that was publicly available to them at the time.

16 So for those reasons and for the reasons included  
17 in our papers, Your Honor, we suggest that the request that  
18 there be a limited noticing tied to parties that may have  
19 been impacted by the matters that are outlined in the  
20 deferred prosecution agreement, that that should be  
21 overruled. And with that, I will turn it over to Mr.  
22 Huebner.

23 THE COURT: Okay.

24 MR. HUEBNER: Your Honor, let me be very brief. I  
25 hope not to take more than five minutes, but this is very

1 important, and I think there is actually a lot on the line.

2 Number one, I do want to acknowledge, we're all  
3 talking about competing goods and we're all talking about  
4 balance. It's not -- this is not a binary issue. The issue  
5 is there is a material cost of delay, there is risk of  
6 delay, and there is a probability of delay. And ultimately,  
7 in part, this comes down to judgment, but the judgment has  
8 to be looked at in context, and the context is that this  
9 original bar date was, you know, on a combined basis  
10 probably the longest, deepest, most expensive, most  
11 elaborate bar date in U.S. history.

12 We sort of joke about it, but, you know, that is  
13 actually what Jim McClammy got sort of, you know, canonized  
14 as St. Jim because we spent weeks and weeks and weeks taking  
15 incredible amounts of input from every single group about  
16 how to improve, extend and deepen the program and do things,  
17 frankly, that in many cases, have never been done before.

18 And, you know, the numbers that we're talking  
19 about, if you even sort of close your eyes and go back even  
20 just a few years, to say that 95 percent of the more than  
21 300 million people in our country will hear about the bar  
22 date more than six times is something that 10-15 years ago,  
23 nobody could have even fantasized could be something that's  
24 going to be put into a declaration. Now it used to be you  
25 would mail it to creditors' last known address and you would

1 take out four newspaper ads and that would be it. This is  
2 as far from that as anything could be.

3 And at the end of the day, as Your Honor has noted  
4 several times, this is about evidence. It's applying the  
5 facts to the law and notions of fairness. The evidence at  
6 this hearing, just like the evidence at the original  
7 hearing, is all and exclusively the Debtors. There is a  
8 very detailed declaration about the extraordinary number of  
9 touchpoints that the bar date has already had, about the  
10 extraordinary length of the bar date, and as far as we can  
11 tell from sophisticated computer website hits and things  
12 that those of us over 50 barely understand, an extraordinary  
13 effectiveness in getting the message out. And no one has  
14 actually said anything to the contrary, except I guess from  
15 Mr. Troop saying that some unknown person quipped to him  
16 that he or she believes that we may see more claims if the  
17 bar date is extended, which obviously isn't really hearsay,  
18 it's just an aside.

19 And so, you know, I think at the end of the day,  
20 the Debtors listened hard as they did the first time, and  
21 the committee listened hard; I should say committees because  
22 there are about seven of them. But in this case, I mean the  
23 official committee of unsecured creditors, which is the  
24 fiduciary for all unsecured creditors, for all claimants in  
25 this case who seek to file a claim and assert one against

1 the Debtors.

2 And so, you have the twin fiduciaries who listened  
3 and listened and listened and listened to arguments for only  
4 my group, only my group and one other group, only on a  
5 showing of cause, none at all, zero days, 15 days, 30 days,  
6 45 days, 60 days, a couple of people saying 90 days. And we  
7 made a judgment to move for relief from our own motion that  
8 was granted on unanimous unopposed consent because we  
9 thought an extra time period was needed. Nobody has said,  
10 and there are no red herrings here, that for every day the  
11 bar date is extended, the case will be extended, and it will  
12 cost X dollars.

13 We obviously understand and I think I was very  
14 clear at the outset, as was Mr. McClammy, that there are  
15 many other things going on in this case, very many people  
16 are hard at work on parallel tracks, and we're massively  
17 parallel processing. But any time one of the mega-things  
18 gets pushed out, the case almost surely gets pushed out,  
19 which is why we said that a further extension, we believe,  
20 is highly likely to take tens of millions of dollars in  
21 damage to the business and risk and cost and delay out of  
22 the hands of the people that we're desperately trying to get  
23 the money to as soon as we possibly can.

24 And so, I think at the end of the day, you know,  
25 the layout of the parties is also not irrelevant, you know,

1 and Mr. Preis went into that in some detail. And it's a  
2 matter of counting heads and it's not a matter of saying,  
3 you know, the two Chapter 11 fiduciaries are completely in  
4 accord on the approach because obviously the states are  
5 sovereign and their fiduciaries.

6 And, unfortunately, it's been the case at so many  
7 hearings in this case, the dissenting states are on one side  
8 and a great number of other ad hoc committees and  
9 individuals and the Debtors and the UCC are on the other,  
10 and that's their right and they are obviously the caring  
11 fiduciaries for the citizens of their states. But we also  
12 have many people who separately speak for and legally  
13 represent or purport to or allege to the individuals in the  
14 state or the subdivisions within those states or the  
15 hospitals within those states or the (indiscernible) within  
16 those states.

17 And so, at the end of the day, you know, there's  
18 no magic right answer, but it is a question of balancing  
19 competing goods. And the Debtors, joined by I think the  
20 overall majority of organized parties in the case, very  
21 strongly stick with the balance that they struck after  
22 listening for weeks to all the parties and all their various  
23 thoughts in the rather extraordinary step of seeking relief  
24 from their own motion to extend what, as I said at the  
25 outset, was I think already the touchiest, in terms of



1 touching Americans in enormous numbers enormous number of  
2 times, longest deepest and probably most expensive bar date  
3 that any of us has ever seen, and we ask that the relief in  
4 the form for which we have moved be granted.

5 THE COURT: Okay. All right, appreciate  
6 everyone's input on this. I have before me a motion by the  
7 Debtors to extend the general bar date in this case from  
8 June 30th to July 30th of this year, a 30-day extension. It  
9 was made in response to, first, a number of letters filed  
10 starting in early May by individuals, as well as  
11 organizations, that have a role in fighting the opioid  
12 crisis in this country for an extension of the bar date in  
13 light of COVID-19.

14 But it's also clear to me that the effect of  
15 COVID-19 was being considered at the same time by the key  
16 parties-in-interest in this case, including the Debtors  
17 independently, the official unsecured creditors' committee  
18 and various ad hoc committees, and that led to the Debtors'  
19 motion.

20 It has elicited a remarkable range of responses.  
21 I think, if one were counting heads, the general majority of  
22 parties-in-interest in the case have agreed to the concept  
23 of a 30-day extension, with the exception of the two groups  
24 of states and, in terms of the consenting ad hoc committee,  
25 other governmental entities which interestingly have taken

1 diametrically opposite positions. One group, the non-  
2 consenting states group has sought a 90-day extension;  
3 whereas, the so-called consenting ad hoc group has argued  
4 that there should be no extension.

5 Frankly, I do not doubt the good faith and well-  
6 meaning nature of any of these responses. I think people on  
7 this issue, as they have with other issues in this case,  
8 have taken their positions in good faith and sincerely, not  
9 with an ultimate strategic end that would harm the ultimate  
10 claimants here, which are the parties that would be affected  
11 by the bar date.

12 This is a highly unusual case. There is no funded  
13 debt. All of the claimants here effectively are unsecured  
14 creditors and all but a minute portion are claimants because  
15 of either tort or other theories connected to opioids. And  
16 if one were to draw them diagrams, one could conclude, given  
17 the presence of all but a couple of states who have already  
18 settled prepetition their claims, that every citizen of  
19 every state in the United States is a claimant in one way or  
20 another, at least in terms of being represented by their  
21 state Attorneys' General or state governments, and in  
22 addition, multiple governmental entities below the state  
23 level.

24 Nevertheless, it is critical here, as in every  
25 case, to have finality as to the universe of claims so that

1 the parties can be confident that a Chapter 11 plan that  
2 distributes the Debtors' value to claimants is doing so  
3 without risk of other claimants coming out of the woodwork  
4 and asserting claims separate and apart from the plan.

5 In light of that fact and the unique circumstances  
6 of this case, i.e. the very broad number of claimants or  
7 potential claimants, the Debtors proposed, and the Court  
8 approved in early February of this year, an extraordinary  
9 bar date in terms of the number of days to assert a claim,  
10 as well as an extraordinary notice program, which has a high  
11 cost to it, over \$23 million.

12 But all of the constituents active in these cases  
13 believed then, and I think still believe now, that that cost  
14 was warranted given the number of potential claimants, their  
15 desire to see the types of claims asserted. And the fact  
16 that under the Supreme Court and Second Circuit case law on  
17 notice, much of that notice -- most of that notice would  
18 need to be not individualized because the Debtors do not  
19 have readily ascertainable data to provide individual  
20 notices.

21 And, in fact, one could argue that if that were  
22 the case, you'd provide individual notices to every person  
23 in the United States, but rather would need to provide, in  
24 addition to the notice on people on their schedules and who  
25 one would say are readily ascertainable claimants or

1 potential claimants, one would need to provide extensive  
2 public notice far beyond the normal notice in Chapter 11  
3 cases through, generally speaking, limited print media.

4 The notice here is indeed extraordinary, as was  
5 detailed on Page 8 of Ms. Finegan's declaration in support  
6 of the original bar date motion and then in her supplemental  
7 declaration from May 20th in support of the current motion,  
8 the notice is not only in print media, but extensive  
9 television and radio notice, community outreach, and -- and  
10 I think this is perhaps going to be more of a trend but it's  
11 a major element of the notice here -- online, social media,  
12 out of home, i.e. billboards, and earned media, including  
13 bloggers and creative messaging. That was combined with a  
14 simplified proof of claims form and the ability to file a  
15 claim or first, get more information about filing a claim  
16 online -- there was a specific claims website -- and to file  
17 a claim either online or by mail.

18 Based on Ms. Finegan's supplemental declaration,  
19 it appears clear to me that that process of providing notice  
20 has been quite successful in its goal in ultimately reaching  
21 roughly 95 percent of all adults in the United States over  
22 the age of 18 with an average frequency of message exposure  
23 of six times, as well as over 80 percent of all adults in  
24 Canada with an average message exposure of over three times.

25 In addition, the bar date program provided

1 sufficient flexibility so that with the Covid pandemic, the  
2 Debtors were able to switch out of certain types of  
3 noticing, most specifically in movie theaters, into other  
4 types of noticing, and to move their funds also to types of  
5 media that, apparently in light of Covid, have gained  
6 substantial viewership.

7 The Court recognizes, however, that there are two  
8 steps in a proof of claim filing process: there is the  
9 notice process, and then there's the process in filing a  
10 proof of claim. Here, the Debtors' program made filing a  
11 proof of claim easy, more easy than in most cases. It is a  
12 myth, for example, that one needs detailed medical  
13 information to file a claim in these cases. There is also  
14 no bar to filing a proof of claim in this case if you cannot  
15 prove that you or your loved one was prescribed OxyContin or  
16 some other opioid from Purdue; that would not be a perjured  
17 proof of claim or a false proof of claim if you have a good  
18 faith belief in such a claim.

19 It might ultimately turn out that the claim would  
20 be disallowed because there might not be a legal basis for  
21 the claim, but the notion that you must be prescribed and  
22 show the prescription for one of the Debtors' opioid  
23 products in order to file a claim is simply not true.

24 On the other hand, the Debtors have recognized  
25 that there is cause to believe that because of the COVID-19

1 pandemic and the requirement that individuals maintain  
2 social distancing and, generally speaking, do not engage  
3 with others unless in a necessary setting, that filing a  
4 proof of claim might be somewhat more difficult and require  
5 an extension of the bar date.

6 Many of the initial letters mentioned the fact  
7 that the deadline for filing tax returns was extended 90  
8 days from April, from mid-April to mid-July, for example.  
9 The Debtors have proposed an extension to the end of July  
10 for the bar date here, which would be in effect a six-month  
11 notice period which, as the Debtors point out, is  
12 extraordinary long in the context of any Chapter 11 case,  
13 even one like this.

14 Based on the evidence before me, it is only the  
15 perception that COVID-19 has upended peoples' lives that  
16 would require any extension here, as opposed to what no one  
17 has argued but what has been considered in other cases, some  
18 problem in the notice program or some new discovery of  
19 another claim group or something like that. Frankly, the  
20 only basis for the requested extension is simply a  
21 perception. There is no real evidence that the filing of  
22 claims in these cases has, in fact, been materially affected  
23 by the COVID-19 crisis.

24 That leads to what is the right extension. And,  
25 frankly, given the variation or variables in the parties'

1 views on this, I think counsel for the committee, Mr. Preis  
2 -- or Mr. Preis, excuse me -- is right and also candid in  
3 saying one doesn't have a necessarily correct legally right  
4 answer here, but merely needs to do what one things makes  
5 sense in light of all of the circumstances.

6 The Debtors basically give three reasons for an  
7 extension not being more than 30 days. First and  
8 importantly, there is a cost to a longer extension. Even a  
9 30-day extension would have, as estimated, a \$700,000 hard  
10 cost; whereas, it is estimated that a 90-day extension would  
11 have a \$2.1 million hard cost.

12 Secondly, there are undoubted, I believe, and  
13 greater than \$2.1 million so-called soft costs in having a  
14 lengthy beyond-30-day extension of the bar date. Bankruptcy  
15 cases often work on deadlines. The bar date is a critical  
16 deadline in a bankruptcy case. Even though other matters  
17 are continuing in this case on an active basis, including  
18 plan mediation and discovery related to analysis of a plan  
19 that would contain within it potential releases for third  
20 parties, the delay of a bar date inevitably has some adverse  
21 effect on getting this case over with promptly.

22 And arguing for a longer date, frankly, I think  
23 the argument comes down to there's no real harm in having a  
24 longer date, and a longer date would leave no question as to  
25 whether there's a legitimate excuse for not filing a proof

1 of claim by, at this point, July 30th if the Debtors' motion  
2 were granted, as opposed to two months later, September  
3 30th.

4 As far as the cost benefit analysis, it has been  
5 argued that that longer period would provide some more  
6 fairness to people and present litigation over extensions of  
7 the bar date under Rule 9006 and the Supreme Court's Pioneer  
8 case, litigation over which might actually add cost to the  
9 estate. On the other hand, it is my experience that if  
10 someone can show a good reason for an extension -- and in  
11 this case, it would be I think if they actually had COVID-  
12 19, were hospitalized and basically for the period at issue  
13 unable to function reasonably -- the bar date would be  
14 voluntarily extended and the Court would agree with that.  
15 But I agree with the committee's analysis that a more  
16 complicated set of rules for extensions would be unworkable.

17 In light of all of the arguments that were made  
18 and my analysis here, I conclude that the bar date should be  
19 extended the 30 days that the Debtors have requested, that  
20 the committee has agreed with, and that most of the parties  
21 that have taken a position here have agreed with.

22 Again, it is highly unusual to extend a bar date.  
23 I don't believe the extension is warranted based on any  
24 deficiencies in the notice program, and I believe that an  
25 extension of two weeks beyond the date for the extension on



1 filing taxes is weighing all the factors here appropriate,  
2 so I will grant the Debtors motion in that regard.

3 I want to say one thing further about timing.  
4 We're in the ninth month of this case. In some ways, this  
5 motion is a microcosm of the case as a whole. It has  
6 elicited strong views from multiple parties, views that,  
7 again, I believe are taken in good faith and not to foster  
8 any specifically parochial agenda. Nevertheless, the  
9 parties were not able to reach agreement on something as  
10 simple as an extension of the bar date.

11 I began by saying how unusual this case is. What  
12 I did not state then and what I want to make perfectly clear  
13 to everyone now, although I believe everyone knows it, is  
14 that what is most unusual about this case is that there is  
15 ongoing harm, not I hope harm being caused but harm being  
16 suffered by individuals, individual people, as well as the  
17 governments that serve them. The parties in this case need  
18 to realize that the result in this case cannot be exactly  
19 what they want; perfection is not achievable here, and an  
20 effort to achieve perfection will leave the people who are  
21 suffering at greater harm. The parties here need to  
22 understand that where there's a public health crisis, as  
23 Covid has brought home, many views need to be taken into  
24 account. There is no one perfect treatment.

25 I want this case to move, and I will make it move

1 if the parties don't start accommodating each other. And  
2 one way to do that is to tell the Debtors we don't need  
3 consensus on everything. You have an active, well-informed  
4 and diligent official creditors committee that represents  
5 everyone.

6 The Debtors themselves, as far as I can see in  
7 this case, have been acting as good appropriate fiduciaries.  
8 If people cannot see other peoples' points of view and some  
9 consensus can be built, we need to move ahead. So I fully  
10 understand Mr. Huebner's point that we cannot set a date for  
11 a plan here. But if I hear a month or two from now that  
12 people cannot set aside their views as to what is the  
13 perfect use for the money that is available here and agree  
14 to share on how that is to be used, I will be taking steps  
15 to move the case along separately, and it's shame on us if  
16 we don't do that. This is flesh and blood.

17 Secondly, if there is an expectation here of a  
18 plan that will have, in return for a contribution, releases.  
19 When I say discovery should be X and I say it in a way to  
20 avoid further litigation over discovery, then everyone  
21 should understand it should be X and not Y.

22 Now I appreciate that I got the letter from the  
23 creditors' committee yesterday and the Sacklers and others  
24 should have time to respond and they can respond by Friday,  
25 I think you all know why I am extremely disappointed by what

1 I read in that letter. So unless it's not true, I will be  
2 issuing orders.

3 I want the firm, if we're to have a conference, I  
4 want Dentons on the phone and I want the new firm on the  
5 phone and they will be accountable, as will anyone who has  
6 been instructing them to do something other than I  
7 instructed to be done last May, the beginning of May. Hedge  
8 funds may play games like this -- and, frankly, although  
9 it's important to a company and the people it employs to  
10 come out of bankruptcy, I will give hedge funds some time to  
11 shoot themselves in the foot. State Attorneys' General and  
12 governments shouldn't be doing that, nor should the  
13 Sacklers.

14 You must be thinking practically here to get this  
15 company out of bankruptcy and devoting its money to the  
16 Debtors, so enough said on that topic. I'll be looking for  
17 the order from the Debtors on the motion that was on for  
18 today.

19 MR. HUEBNER: Thank you, Your Honor.

20

21 (Whereupon these proceedings were concluded  
22 at 12:28 PM)

23

24

25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya

Ledanski Hyde

Digitally signed by Sonya Ledanski  
Hyde

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Date: June 4, 2020

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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

4 - - - - - x

5 In the Matter of:

6

7 PURDUE PHARMA L.P.,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 Tele/Video Proceedings

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 August 25, 2021

17 10:03 AM

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19

20

21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

1 HEARING re Continuance of Confirmation Hearing From August  
2 23, 2021

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1 P R O C E E D I N G S

2 THE COURT: Good morning. This is Judge Drain.

3 We're here in In Re Purdue Pharma L.P., et al., on the  
4 second day of oral argument in relation to the Debtors'  
5 request for confirmation of their amended Chapter 11 plan.

6 MR. HUEBNER: Your Honor, with apologies, we're  
7 not hearing any audio. I'm not sure if the Court needs to  
8 be heard yet or not. I apologize for interrupting.

9 THE COURT: Thank you. I thought it was off of  
10 mute, but it wasn't. Let me start over again. Thanks.

11 Good morning, this is Judge Drain. We're here in  
12 In Re Purdue Pharma L.P., et al., on the second and last day  
13 of oral argument on the Debtors' request for confirmation of  
14 their amended Chapter 11 plan.

15 I have the order of topics and time that the  
16 parties have agreed to allocate to them, which the parties  
17 circulated overnight. And I'm happy to follow that order  
18 for purposes of today's hearing.

19 MR. HUEBNER: Perfect, Your Honor. Good morning.  
20 For the record, Marshall Huebner, from Davis Polk &  
21 Wardwell, on behalf of the Debtors.

22 Your Honor, two things before we start the agenda.  
23 You know, as always, we have sort of a dual role as a plan  
24 proponent and as an advocate sometimes for our stakeholders,  
25 but also a shepherd of the process.



1           Your Honor, I think it was not lost on anybody on  
2       Monday that Your Honor expressed strong views about  
3       attempting to get to a deal with a final very small number  
4       of stakeholders not yet onboard. I believe three times you  
5       mentioned the heroic effort of Judge Chapman, who worked in  
6       Phase 3 of mediation.

7           I do want to advise the Court that Judge Chapman  
8       seems to have heard that, and she is absolutely back in the  
9       saddle, working extraordinarily hard, again, as a sitting  
10      judge, for, of course, no compensation, just part of public  
11      service, to try to see if anything can be done.

12          As I'm sure it's also not going to be a surprise  
13      for the Court to hear, further work tailoring and narrowing  
14      the releases is something that is the subject of many of the  
15      objections, and certainly the subject of a fair number of  
16      very clear thoughts from the Judge.

17          And so while on one hand, because there are  
18      elements that are being discussed among the parties. And I  
19      won't say more than that, except that the Debtors are  
20      working around the clock to try to facilitate to see if  
21      something can be done assisting Judge Chapman.

22          There are other elements as well, as there were in  
23      round 3 of mediation. There were new covenants and  
24      economics and other things. And I can't say more than that.  
25      That would be inappropriate, and so, of course, I won't.

1 But a fourth or additional element is the  
2 releases. Strategically, one might have argued for a  
3 position that that should be sorted used as part of a  
4 potential big set of final trades in a ground-floor  
5 mediation by Judge Chapman. But I think that would not have  
6 been the right answer.

7 The right answer is to fix (indiscernible) it now  
8 and give the Court and all parties comfort that people,  
9 including on the Sackler side, and facilitated very strongly  
10 by the Debtors and others, continuously recalibrating and  
11 trying to make this the best possible deal for all Purdue  
12 stakeholders.

13 In the middle of the night last night, we filed  
14 the ninth amended plan of reorganization, which really does  
15 one thing primarily, which is substantially further narrow  
16 and tailor the third-party releases that I think it's fair  
17 to say lie at the heart of much of the colloquy and  
18 objection at this hearing.

19 And so rather than saving it to be offered in  
20 mediation, which is now basically ongoing, it's in already  
21 and there for people to see. I think some people understand  
22 it. Some people, I think, are still having it explained to  
23 them. It's very complicated. We are working around the  
24 clock on located things.

25 So in about 30 seconds, I will turn the podium

1 over to Mr. Uzzi, who will, I think, probably be in the best  
2 position to describe to describe those releases, and how  
3 they have changed, and how it is hopefully important to the  
4 objectors , and also quite important to the Court.

5 But before I do that, one over item in my other  
6 role, which is I do want to let the Court know that the Gulf  
7 objection, as Your Honor may remember, was argued by Mr.  
8 Luskin (indiscernible) with Mr. Tobak, negotiations towards  
9 settling that also continue, as we are. Obviously, as  
10 you've seen, you know, every time I get up, we have either  
11 another settlement or fewer objections to announce. I think  
12 everyone knows that's our MO, and we're still doing it here  
13 at the last day of oral argument. And so those are the two  
14 procedural matters before we get to the agenda.

15 So with that, with the Court's permission, I'd ask  
16 Mr. Uzzi to help explain the changes, and certainly in the  
17 minds of the Sacklers, you know, the changes that they made.

18 THE COURT: Okay. Before I hear from Mr. Uzzi, I  
19 think I ought to say two things. First, I have not spoken  
20 to Judge Chapman about her continuation as a mediator in the  
21 case, either before or after what you have just described.  
22 Nevertheless, I'm quite grateful to her, you know, if she's  
23 been willing to take on that role. And I obviously  
24 encourage the parties to try to resolve their differences,  
25 including with her really dedicated and expert efforts,

1 which she brings to every mediation, and certainly from my  
2 reading of her mediators report that was filed earlier in  
3 the case, she brought to this one. So I welcome that  
4 development. Although it's a surprise to me. But I'm  
5 grateful for it, and it's certainly in line with the  
6 admonition I gave to the parties on Monday.

7 Secondly, unfortunately, I have not had the  
8 opportunity to review the change in the ninth amended plan.  
9 So I'm largely in listening mode here, not commenting mode.  
10 But again, I welcome the parties continued work on the scope  
11 of the release and injunction of third-party claims.

12 So, having said that, I'm happy to hear from Mr.  
13 Uzzi.

14 MR. HUEBNER: Your Honor, before he begins, just  
15 two very quick notes. To give credos where they're also  
16 due, the first round mediators also continued after  
17 mediation formally entered (indiscernible) mediation --

18 THE COURT: I understand that.

19 MR. HUEBNER: -- privilege --

20 THE COURT: And, you know, we've been really  
21 fortunate to have world-class mediators in this case, and  
22 they take their role -- they took their role and take their  
23 role seriously and continued beyond the original time  
24 allocated. And you know, again, I encouraged that under the  
25 mediation order. And similarly, even though my mediation

1 order for Judge Chapman set a specific deadline for the  
2 parties, and as everyone knows, deadlines are important,  
3 based on what you've described to me, the discussions that  
4 are ongoing now are similarly under that order. If you face  
5 a similar deadline, which is I intend to rule on Friday on  
6 this request for confirmation on the plan.

7 MR. HUEBNER: Yeah, Your Honor. That was the  
8 tentative point I was going to make. I actually did not  
9 have time to double check it, but hopefully my memory is  
10 right, that the order actually expressly contemplates post-  
11 mediation conversations that I actually believe keep our --  
12 remained governed by the confidentiality shields. And so,  
13 everyone who is having those conversations is treating them  
14 as such.

15 So with that, Your Honor, let me turn my  
16 microphone off and turn it over to Mr. Uzzi to explain what  
17 was filed overnight.

18 THE COURT: Okay.

19 MR. UZZI: Thank you, Your Honor. Gerard Uzzi of  
20 Milbank, on behalf of the Raymond Sackler family.

21 Your Honor, I think what I'd like to do here is  
22 explain to you what we try to accomplish and the changes,  
23 but not necessarily go through those changes line by line.  
24 Obviously, if you'd like us to do that, we can do that as  
25 well. But at least, you know, first give you the conceptual

1 overview, and then I'll take direction from the Court.

2 Your Honor, I mean, I would agree with Mr.  
3 Huebner. You know, we did not and weren't interested in  
4 (indiscernible) these things up as a bargaining chip in  
5 mediation, further discussions. What we've tried to do is  
6 be sponsored, not only to the Court's comments, but also to  
7 comments of some of the objectors, to the extent that we  
8 could.

9 Before I get into the actual changes, Your Honor,  
10 just for the sake of clarity of the record, I think there  
11 are a few things that I can say that I hope is helpful as it  
12 relates to what the releases don't cover, never have  
13 covered. And you know, one of those things, of course, is  
14 criminal liability.

15 And I know Your Honor knows that the releases  
16 don't cover criminal liability. There continues to be, you  
17 know, some innuendo and clouding, I think, that issued both  
18 inside this courtroom and outside. And I thought it might  
19 be helpful, just for on the record, to hear a Sackler  
20 representative say these releases do not cover criminal  
21 liability. Hopefully, that puts any debate on that topic to  
22 an end.

23 There's been a number of suggestions of the tax  
24 liability being released. Tax liability is expressly carved  
25 out. There is no release of tax liability. It doesn't

1 matter who the taxing authority is. There's no release of  
2 tax liabilities.

3 There also has been some suggestion that we were  
4 attempting to shield releasing parties from their future  
5 conduct. The release never contemplated that. We've  
6 clarified that. But it was something that was never in the  
7 release, and I thought it might be helpful just to clarify  
8 that.

9 As far as the comments we've tried to address now,  
10 that were admittedly picked up by the release, the first one  
11 is one that I would characterize as the undiscovered  
12 McKinsey issue, or the undisclosed McKinsey issue, or  
13 something to that effect. And the release was drafted, Your  
14 Honor, against a backdrop of the Sacklers and their entities  
15 having been thoroughly examined and thoroughly investigated.  
16 And we just, in the drafting of the releases, believe that  
17 if there were that type of party, somebody would come to us,  
18 they would identify it, and of course, we would add to that  
19 excluded party list. And that's the spirit of how we had  
20 drafted that release in (indiscernible).

21 What we originally proposed on Monday to address  
22 what I'll call the undisclosed or undiscovered McKinsey  
23 issue, is a carve out for -- we used the defined term  
24 willful misconduct, which was probably not a good defined  
25 term -- but to really pick up some intentional wrongdoing.

1           As we worked on this over the last day, we decided  
2           to make really what I think is a material change here as it  
3           relates to the third-party releases of the shareholder  
4           consultants. And that is to simply carve them out. And so  
5           the shareholder consultants are carved out -- with one  
6           exception I'll talk about in the second -- are carved out of  
7           the release, the third-party release, completely. And we  
8           hope that that just dispenses with the issue.

9           The one consultant that's not an outside third-  
10          party firm, which then exists on what used to be Exhibit H -  
11          - and we've updated it to be Schedule X, I believe, now --  
12          is simply Norton Rose, Your Honor. And they do fit into a  
13          different category. They have been both the family and the  
14          Debtors' -- with their predecessor, Chadbourne & Parke,  
15          counsel to the firm for decades. They have been subject to  
16          discovery here. They have been investigated. And we do  
17          think it's appropriate to keep them on the exhibit. But  
18          we've otherwise carved everybody else out.

19          Because of that, we then removed the defined  
20          willful related party claim, as we just don't believe it's  
21          necessary anymore and doesn't and shouldn't probably apply  
22          to the other parties that were in the release who are  
23          similarly situated to what I would call the core releasees  
24          here.

25          I'll note further, Your Honor, if the exhibit had



1 my permanent, Milbank -- and I don't think I'm stretching to  
2 say the release of professionals is pretty standard in any  
3 release -- but we heard the commentary of why does a certain  
4 named firm need a release.

5 The fact is, my firm doesn't need a release, so we  
6 carved ourself out. And we did that because I, along with  
7 all of my co-advisors here, we do not want to be a  
8 distraction here. So Milbank is out, and the other named  
9 third-party advisors are also off the schedule. And we hope  
10 that that goes a material way to addressing all of the  
11 concerns.

12 The other issue we tried to address, Your Honor,  
13 is to be further responsive on the non-opioid-related  
14 claims. And as you'll remember from Monday, Your Honor,  
15 there was some colloquy over what did that mean. First,  
16 I'll say we've added "reckless" to the definition there of  
17 the type of conduct, the predicate conduct or the predicate  
18 state of mind, I should say, that would trigger that.

19 Your Honor asked me if that definition picked up  
20 fraud, and I incorrectly said no. And I apologize for that.  
21 I went back and read it and I think under that definition,  
22 it already picked up fraud. And actually, things are a lot  
23 broader than fraud, are not limited to fraud. And the  
24 operative word, when you take a look at it, Your Honor, is  
25 "unlawful." All right? So, clearly, fraud is unlawful, but

1 unlawful isn't limited to fraud. And I think that that word  
2 really does it. But we did add fraud or fraudulent conduct  
3 to the definition, just to be clear.

4 We changed then, Your Honor, the definition from  
5 willful misconduct to non-opioid actual misconduct claim.  
6 We just think that that is a more descriptive term. I've  
7 had a lot of semi-scholarly colleagues try to tell me that  
8 willful misconduct was confusing, so we just try to take  
9 that confusion out. That, Your Honor, applies to all the  
10 releasees. So if all the releasees are on for non-opioid  
11 liability are subject to the non-opioid actual misconduct  
12 claim.

13 And then, if you look -- when you go through this,  
14 Your Honor, and you know, I will give you the cite. In  
15 10.7(v), where the heaviest blackline is, that is simply to  
16 pick up the indemnification claims that could otherwise be  
17 asserted against the Sacklers. If we're carving out from  
18 the releasees the -- I'll call it the McKinseys of the world  
19 -- we can't have, of course, a backdoor coming back in. And  
20 we just clarified that language in there. It was always  
21 like that, Your Honor, but we just needed to change the  
22 words in order to pick it up because of other changes we've  
23 made.

24 Your Honor, that's the overview. I'm happy to go  
25 into some detail. I'm also happy to answer any questions

1       you might have.

2               THE COURT: Well, again, I haven't had a chance to  
3       parse the language, but I appreciate the overview. I guess  
4       what I would say -- and I appreciate that these changes, as  
5       you've described them, are constructive and have narrowed  
6       considerably the release -- is that I'll carve out some time  
7       at the end of today's argument for people who have objected  
8       on the basis of the breadth of the release, and that only.  
9       Not any other aspects of the release, but just the breadth  
10      of the release, to have the chance to point out to me their  
11      view, if they still have it, that the releases still overly  
12      broad.

13              So I think all of the people on the call today or  
14      on the Zoom today have the proposed allocation of time for  
15      oral argument today. And just at some time at the end of  
16      that schedule for people to point out to me if they want to,  
17      and for the Debtors and others to respond, issues that  
18      remain as to the breadth of the release language. And that  
19      will --

20              MS. UZZI: Thank you --

21              THE COURT: -- give me a chance to look it over at  
22      the lunch break also.

23              MR. UZZI: Very well, Your Honor.

24              THE COURT: Okay. Thank you.

25              MR. HUEBNER: Okay. So, Your Honor, I believe

1       that brings us to the first item on the agenda, which is  
2       best interests of Ditech. Mr. Goldman asked for 35 minutes,  
3       so we're fine with that. I may run a little bit longer than  
4       my initial plan of 20, for fairness and symmetry, and  
5       because I have something I want to begin with before I  
6       actually head into best interests.

7               THE COURT: Okay.

8               MR. HUEBNER: Your Honor, there was some  
9       interesting colloquies from the Court, pretty scholarly,  
10      frankly, for those of us who are, you know, bankruptcy  
11      folks. On Pages 180-182 of the transcript, and then again  
12      on 57-259, about the factor of Metromedia that requires, or  
13      seems to contemplate, creditors being paid in full, which  
14      just makes no analytic sense, because there's nothing to  
15      release if creditors are paid in full. And Your Honor cited  
16      millennium labs and their fairness test, the much more  
17      recent Third Circuit decision, as seemingly a logical  
18      imperative and much more sensible.

19              In addition, Your Honor, you actually cited  
20      ourselves to 1129(a)(7) on Page 181, Line 12-16, and said, you  
21      know, isn't this the right answer? Because if 1127 requires  
22      -- 1129(a)(7) requires that you're getting more than you  
23      would get in another scenario, is not definitionally fair,  
24      so that proving the best interests test may actually be kind  
25      of what the Third Circuit meant.

1 Third Circuit Standard, as of course I think all  
2 litigants in this case know, in their recent decision from  
3 2019, is that, "The hallmarks of permissible nonconsensual  
4 releases are fairness, necessity to reorganization, and  
5 specific factual findings to support these conclusions."  
6 That's Metromedia at Page 139. I'm sorry -- Millenium --  
7 I'm just so tired -- at Page 139.

8 So I think that's actually dead on. And so, you  
9 know, when I now will launch into my best interests  
10 argument, which is really so important because it is the  
11 view of basically everybody in the case, rather than one  
12 objector, implicitly or explicitly, that this is the highest  
13 and best recovery for creditors, and it is better than a  
14 liquidation, plus the pursuit of third-party claims. I  
15 think that actually the Third Circuit maybe had it right.  
16 And fairness means, you know, if you can't do better than  
17 what we're getting for you under this plan, what else should  
18 we be doing but this plan?

19 So with that, if Your Honor will let me launch it.

20 THE COURT: Can I -- and I, at risk of -- and I  
21 don't think it's -- it doesn't derail your argument, but I  
22 want to be clear. The best interests test, as set out in  
23 Section 1129(7), is a statutory test, and one needs to  
24 follow the words of the statute. And the courts to some  
25 extent disagree about what the statute says, based on its

1 plain terms.

2 What I was addressing contemplates one  
3 interpretation of the best interests test. But even if one  
4 takes the other interpretation of it, which is that you  
5 don't look at what one gets on one's claim in the case, you  
6 just look at what you get on the claim in the case, I think  
7 that fairness, in the sense described not only by the  
8 Millenium Court, but actually in the earlier section of  
9 Quigley by Judge Bernstein, requires some analysis, if it  
10 can be done, into what sort of recovery the enjoined parties  
11 would have if the plan were not confirmed. And that's not  
12 applying strictly the best interests test. That's a more  
13 rigorous view of fairness than one might normally apply to a  
14 9019 settlement, in other words.

15 MR. HUEBNER: Your Honor, I agree completely. And  
16 as you'll hopefully here in a few minutes, I'm going to  
17 cover every alternative interpretation of 1129(a)(7), and  
18 show you why we are extraordinarily comfortable that we meet  
19 the statute's 24:16 we meet the statute's \_\_\_\_

20 Your Honor, 1129(a)(7), as of course everyone  
21 knows, requires that the Debtors demonstrate that rejecting  
22 impaired creditors who receive no less under the plan than  
23 they would in the hypothetical Chapter 7 liquidation.

24 Here, Your Honor, the Debtors' proposed plan is  
25 expected to distribute well in excess of \$5.5 billion in

1 cash on account of contingent liability claims. There is no  
2 dispute that creditors will recover billions more under  
3 claims against the Debtors than they would recover if the  
4 Debtors had to liquidate.

5 The only possible dispute is whether the rejecting  
6 creditors could actually recover, in a Debtor liquidation on  
7 their own third-party claims against the Sacklers and  
8 others, value that exceeds all of their many recoveries  
9 under the plan, including the settlement of those third-  
10 party claims, but as to a very small number of parties is  
11 being imposed by the will and the votes and positions of the  
12 overwhelming majority. There are three principal objections  
13 why this objection fails.

14 First, as Your Honor just noted, the Second  
15 Circuit has not actually determined whether third-party  
16 claims should be considered at all in the best interests  
17 analysis. And other courts that are also thoughtful, do not  
18 agree with Quigley and Ditech.

19 The AHC argued this in their brief at Pages 155-  
20 158. I will actually rest of their papers on this point,  
21 because I actually prefer to spend my time on the assumption  
22 that it is obligatory, including for the larger fairness  
23 reasons, for us to get the Court and all parties comfortable  
24 that even rejecting creditors do better under this plan than  
25 any other alternative we know of.

1           So, Your Honor, if you accord with Quigley and  
2     Ditech, which is just fine for us and many others, it is  
3     clear beyond peradventure that under the holdings of those  
4     cases, we are not required to assign a specific dollar value  
5     to the potential recoveries on rejecting creditors'  
6     unknowable, inestimable third-party claims.

7           To the contrary, both of those cases make it  
8     crystal clear that the value of third-party claims is only  
9     to be considered when the claims are both, one, not  
10    speculative, and two, capable of estimation.

11           Let's take a close look at those cases. Quigley  
12    is an asbestos case in which Judge Bernstein estimated the  
13    value of third-party claims against Pfizer, Quigley's  
14    parent, based on a 19-year track record of settlements, for  
15    which Pfizer had paid over \$1.2 billion and a mathematical  
16    average of 23 percent of the claims asserted against it over  
17    almost two decades. 437 B.R. 134, 146. But that two-decade  
18    track record, the claims at issue were not speculative and  
19    were capable of estimation.

20           In Ditech, the Debtor tried to do something really  
21    pretty sneaky, and they were caught. They actually, in  
22    fact, estimated the settlement and resolution value of the  
23    varied third-party claims for some purposes under their plan  
24    and (indiscernible). And then -- but not for these  
25    purposes. And Judge Wiles said, no way, you can't pick some



1 purposes and not others. You have already told me that the  
2 claims are not speculative and hypothetical, but rather that  
3 you can estimate them. 606 B.R. 544, 620-621.

4 The contrast to the instant facts could not  
5 possibly be greater. Unlike Quigley, there is no multi-  
6 decade history of judgments or settlements or percent  
7 allocations against the third parties to draw from.

8 And unlike in Ditech, the Debtors have  
9 consistently stated that the value of an individual  
10 rejecting creditor's direct claims, what they would actually  
11 recover some day if this plan failed, is the very definition  
12 of unknowable and unquantifiable.

13 Your Honor, given the Debtors' extensive record  
14 evidence on liquidation, including its DelConte expert  
15 report, Paragraph 9, et seq., the disclosure settlement  
16 Sections 173-175, the objectors really need to demonstrate  
17 that their own actual recoveries on direct claims in a  
18 liquidation would be massive, knowable and quantifiable.

19 I will stop at 11 reasons why that quixotic  
20 endeavor cannot succeed. One, the terrible destruction of  
21 estate value in a liquidation. It is uncontested and  
22 uncontestable that the liquidation of the Debtors would  
23 greatly reduce the value available to go to these very  
24 creditors. DelConte at 9; Turner at 22; disclosure Appendix  
25 B at 11. So those billions get wiped from creditor

1 recoveries in a liquidation.

2 Two A and two B, massive professional fees and  
3 totally uncertain allocation of any recovery to specific  
4 creditors from the estates in a liquidation. Liquidating  
5 the estates and resolving the hundreds of thousands of  
6 claims filed, will require a multi-year massive investment  
7 of professional these.

8 Liquidating the claims and resolving the relative  
9 entitlement of creditors vis-à-vis one another, once Phase 1  
10 mediation is erased, would be an intercreditor litigation  
11 maelstrom of victims and stakeholders against victims and  
12 stakeholders, whose outcome is unknowable. The only thing  
13 we do know is that rational fees will be at least half a  
14 billion and maybe more than \$1.5 billion. DelConte  
15 declaration at Paragraph 36.

16 And as Mr. Shore, who actually represents tens of  
17 thousands of PI victims, told the Court: "Do not forget. We  
18 are the largest group, the largest number of voters, the  
19 largest claimants." And as he had told many of us, they  
20 will be back if there is no deal under this plan.

21 Number 3, reduced recovery on the estate claims  
22 against the Sacklers. The estate might recover less on its  
23 claims against the Sacklers in a liquidation. Mr. DelConte  
24 sets forth multiple reasons for this in his report. See  
25 DelConte declaration at 33. This result is also described

1 in our disclosure statement. It's painful, but it's true.  
2 No party cross-examined Mr. DelConte on this sworn  
3 testimony.

4 And then we have the testimony of Ms. Conroy, who  
5 has been suing Purdue for 19 years under his partner and  
6 (indiscernible) partner, named partner, who was there  
7 alongside her. Her testimony, August 16, transcript 18, 9-  
8 22, is that this deal reflects a peace premium where we're  
9 getting more than we would get if global peace were not able  
10 to be on offer.

11 Four. The DOJ's claims. The DOJ has an agreed \$2  
12 billion forfeiture claim with superpriority status. They  
13 also have billions of dollars of other claims, that if the  
14 deal falls apart, they will likely assert, or likewise, in  
15 rem claims, priority claims, nondischargeable claims,  
16 because they're the federal government, et cet.

17 Those claims might absorb every dollar of net  
18 estate liquidation proceeds, leaving nothing for anybody  
19 else. Because among so many other things, even if parts of  
20 the deal stuck, we don't think we can satisfy the conditions  
21 for getting the \$1.775 billion forfeiture credit that is in  
22 fact on offer in the settlement this Court approved, with  
23 them ironically over the objection of the remaining  
24 objectors to confirmation.

25 Five -- which is a coalition of sorts. Instead of

1 four or five or more billion dollars that non-federal  
2 governmental creditors in Class 4 are getting, they will  
3 likely get close to zero. The consequence, when you add up  
4 all the predecessor points of the value destruction in  
5 seismic into creditor reallocations that I have outlined, is  
6 massive and uncontroverted.

7 Mr. DelConte's liquidation analysis lays out in  
8 two of the three scenarios, Class 4 creditors get zero.  
9 Only in a high case scenario, there's \$699.1 million for all  
10 creditors to share, not just the rejecting creditors in  
11 Class 4.

12 The objectors did not question any of these  
13 conclusions, although they had ample opportunity in days of  
14 trial testimony. I talked on Monday about my simplistic  
15 view that we're here to apply facts to law. No objector  
16 designated a competing expert. No objector submitted an  
17 expert report with a competing liquidation analysis. No  
18 objector designated a rebuttal expert, critiquing Mr.  
19 DelConte's analysis. No party even deposed Mr. DelConte.  
20 And no party spent any material time on cross-examination on  
21 these issues. If they meant it, we should have tried to  
22 prove it.

23 There is no evidence of any kind from any party at  
24 all that the likely recovery on their own direct claims is  
25 concrete for estimable. The Debtors' evidence that the

1 claims are speculative and not capable of estimation is  
2 overwhelming.

3 Six -- and a lot of these are tied to the public  
4 good and to helping America and Americans -- abatement. Dr.  
5 Gaurisankaran testified, without contravention, and I quote,  
6 "Abatement programs that reduce opioid misuse for a  
7 population will confer economic value to all entities that  
8 serve the same population and claim to incur costs because  
9 of opioid misuse." Declaration at 47. And that abatement  
10 results in "multiplier effects" that provide creditors,  
11 especially governments, I believe, with value that may well  
12 exceed the dollar value distributed under the plan.

13 In the liquidation, there can be no guarantee that  
14 all or most or even a substantial portion of the funds  
15 creditors someday recover from the Sacklers would actually  
16 have to go to abatement, and thus, this important multiplier  
17 is gone.

18 I do want to reiterate, Your Honor, one last time,  
19 my apology to Washington and Maryland, who seemingly passed  
20 statutes -- who did pass statutes -- of course, what they  
21 said to the Court is true -- directing their recoveries must  
22 go to abatement. I got that wrong and I'm very sorry about  
23 that. But as I also then noted, there are many, many other  
24 states whose situation is exactly the contrary, and there  
25 are tens of thousands of other creditors who would be in

1 line with no obligations, as they have extraordinarily  
2 agreed to in this case, to dedicate all of their recoveries,  
3 other than the PIs, to abatement.

4 Seven. Objectors would need to bridge a chasm of  
5 billions of dollars to win an 1129(a)(7) argument, because  
6 they are billions in the hole due to the total wipeout of  
7 their plan recoveries. And it's from there they must begin  
8 to try to argue that exclusively and solely from their own  
9 potential recoveries on non-speculative claims against the  
10 third parties, they would get more than the billions that  
11 they would make unavailable to everybody if the plan was not  
12 confirmed.

13 Eight. It is utterly impossible for any of the  
14 few objecting rejecting creditors to demonstrate that they,  
15 and only they -- and that's the critical phrase -- and only  
16 they, will when the frenetic race to the courthouse against  
17 third parties.

18 The objectors' suggestion that the Debtors could  
19 have hired a damages expert to address the objectors' best  
20 interest argument only highlights the staggering depth of  
21 their misunderstanding of the law. Damages are about claims  
22 that one could assert. The best interests test is about  
23 recoveries; what I actually do better than this plan at the  
24 end.

25 It is beyond cavil, Your Honor, that no claimant

1       could possibly credibly predict that the actual recovery on  
2       their claim against the Sacklers, after years of internecine  
3       warfare among creditors and disorderly races to hundreds of  
4       thousands -- or for thousands of courthouses -- is knowable.  
5       It's like trying to solve a single equation that has  
6       hundreds or thousands of variables. 4(a) plus 5(b) minus  
7       5(c) plus 8(d) equals X? It cannot be solved.

8               And it has nothing to do -- nothing -- with the  
9       merits and strength and validity of the claims of any  
10      individual entity against the Sacklers. Because for an  
11      individual rejecting creditor to prove that it itself would  
12      actually recover more, it can't only show that it's likely  
13      to get a big judgment. It has to show that no one else  
14      would, and only they would.

15             Because logic dictates that if the three rejecting  
16      states who have made a best interests objection have  
17      meritorious claims, so do all the non-rejecting states. And  
18      if all the states have meritorious claims, then it stands to  
19      reason that many other public creditors also have  
20      meritorious claims. And if all states and tribes and  
21      municipalities have valid claims against the Sacklers,  
22      likely so do the hundreds of thousands of private contingent  
23      liability claimants.

24             And every one of these groups for whom the Debtor  
25      is a fiduciary has filed proofs of claim under penalty of

1 perjury, that they believe that they have those claims  
2 against the Debtors and the Sacklers, which is why the  
3 States' \$2.156 trillion claim, as large as it is, is dwarfed  
4 20 times over by the \$39 trillion of other filed claims.  
5 And that's only 10 percent of them, because while the  
6 states' claim was liquidated, most of the other claims, 90  
7 percent of them, were not.

8           Nine. Thousands of claimants would be chasing a  
9 smaller and possibly (indiscernible) of assets. Let's  
10 assume that direct claimants are able to recover every penny  
11 of the aggregate personal wealth of the individual members  
12 of the Sackler Family, named as Defendants in the third-  
13 party litigation. Claimants would still come up billion  
14 short of the \$4.375 billion that the Sackler Families have  
15 agreed to pay under the settlement, and even more billions  
16 short of the \$5.5 billion total in minimum projected value  
17 that those creditor standard receiver under the plan.

18           And during the years that people were suing the  
19 Sacklers, one would imagine the Sacklers will pay hundreds  
20 of millions or more in legal fees, and might, for example,  
21 use their assets to settle with non-rejecting creditors. So  
22 if non-rejecting creditors get settlements, then rejecting  
23 creditors even more can't do better than they would do under  
24 the plan. Which is why the intercreditor complexity, which  
25 seemingly, virtually every single party in the entire case,



1       except for nine, seemingly understands and has reluctantly  
2       and painfully led them to conclude that this settlement,  
3       which does leave the Sacklers with material wealth, is  
4       better for them, the claimants, than any other alternative.

5               Ten. Claimants cannot reasonably estimate the  
6       prospect of they themselves successfully recovering on their  
7       direct claims. I am not going to cite -- and I am most  
8       certainly not ever going to accord with or endorse the  
9       evidence and argument submitted by the Sacklers about their  
10      lack of culpability and their defenses to collection with  
11      respect to their trusts. Not now. Not ever. They are the  
12      Defendants and estate is the Plaintiff, along with many  
13      others. And if we do not settle, we will be suing them for  
14      billions of dollars. Make no mistake.

15             But what I am is the fiduciary and spokesman for  
16      the shareholders. The Debtors didn't vote on the plan.  
17      That's not our job. But 38 attorneys general, and the UCC,  
18      and the AHC, and the MSG, and the adult (indiscernible), and  
19      the pediatric (indiscernible), and the tribes, and the  
20      hospitals, and the TPPs, and the rate payers, and the  
21      Board's Special Committee, considered a great, great many  
22      things in deciding to accept this settlement.

23             I think it is fair to say that while we disagree,  
24      Jersey law, Wyoming and Connecticut trusts, and Mr.  
25      Cushing's testimony, do raise litigable issues with respect

1 to the ability to recover on direct claims against the  
2 Sacklers from the very material assets held in their  
3 (indiscernible) trusts.

4 As I noted on Monday, Your Honor -- ironically, I  
5 think it was Paragraph 239 of our brief -- the Debtors have  
6 the strongest claims against those trusts, because we have  
7 in rem claims based on the irrevocable vested in the estate  
8 of the fraudulent transfer and analogous claims. Those are  
9 not direct claims. So they don't figure into the  
10 hypothetical 1129(a)(7) showing when you're trying to weigh  
11 a direct claim as an add-on to what you might get in a  
12 liquidation.

13 And Your Honor, in this regard, the litany I just  
14 read to you, it is incredibly telling that in this case,  
15 with over half a million creditors, there is one objection,  
16 one, that makes a best interests objection. One. Mr.  
17 Gold's pleading on behalf of DC, Maryland and Connecticut.  
18 And with no disrespect intended, because I think he's doing  
19 a terrific job and he's a very serious lawyer, he made that  
20 objection in one page of his brief. No factual support for  
21 the types of claims that would need to be proved.

22 THE COURT: Actually, I thought it was just  
23 Connecticut --

24 MR. HUEBNER: Finally, Your Honor --

25 THE COURT: I thought it was just Connecticut and

1 Maryland on that one. DC joined the other one --

2 MR. HUEBNER: Oh, Your Honor, I apologize. I  
3 thought that objection said filed on behalf of DC, Maryland  
4 and Connecticut. But if DC didn't join that argument, then  
5 it's one objection on behalf of two parties, as opposed to  
6 three. But I think, you know -- I think the point is the  
7 same.

8 THE COURT: You know what? I was wrong. It does  
9 include DC.

10 MR. HUEBNER: Your Honor, Judges are never wrong.

11 THE COURT: Well, I was wrong.

12 MR. HUEBNER: Number 11. Your Honor, Number 11.

13 Claimants rejecting creditors making a best interests  
14 argument cannot possibly quantify or know or estimate the  
15 massive cost and delay to them of lengthy and chaotic  
16 jurisdiction, because as many as 58 jurisdictions all over  
17 the world. No creditor could possibly allege without  
18 speculating what they would actually recover net of the cost  
19 of litigation and collection and delay, after years of  
20 (indiscernible) warfare by thousands of creditors with all  
21 against all.

22 For these 11 reasons, Your Honor, among others,  
23 the direct claims of three creditors out of the hundreds of  
24 thousands who have raised a best interests test, I believe  
25 are literally the archetype -- actually the archetype of

1       claims that in these complex circumstances are speculative  
2       and not capable of estimation.

3               Your Honor, that brings me to my third and final  
4       meta point. While I hope that my reasons each individually,  
5       and certainly collectively, demonstrate the views of so many  
6       for whom I'm speaking today, that rejecting creditors would  
7       not do better in the liquidation, and would do ever so  
8       terribly worse even inclusive of their direct claims. I  
9       have overwhelmingly, in fact, perfect empirical evidence  
10      from July and August of 2021 for the unassailable veracity  
11      of this position.

12             38 states, 80 percent of the voting states have  
13      done the work for years, litigating against Purdue and the  
14      Sacklers, weighing the alternatives, and fighting like hell  
15      for their citizens against Purdue and the Sacklers. And  
16      they have concluded that the Plan provides superior value to  
17      states than does liquidation. This is true for this -- many  
18      other creditor groups, who I will not again list, who  
19      support this Plan. And between all these parties, they are  
20      represented by many of the most sophisticated, and one might  
21      argue fearsome, mass tort plaintiffs' firms and other  
22      litigation firms in this country whose clients I can  
23      guarantee you, having done almost nothing else for three and  
24      a half year, have suffered at least as much loss and have  
25      unthinkable antipathy for the Sacklers as any of the Plan

1 objectors.

2 In stark contrast to the wild speculation to the  
3 nth power, they would be involved in assessing what an  
4 individual rejecting creditor, out of 614,000 competitors,  
5 would actually recover in liquidation, the market of states  
6 identically situated to the one best interest set of  
7 objectors, has spoken on this point with extraordinary  
8 clarity, and chosen which gives them the better recovery.

9 And of course, Your Honor, the bankruptcy system  
10 under the guidance of the Supreme Court, love market tests  
11 to prove things. See e.g., 203 N. Lasalle, 119 S.Ct. 1411.  
12 There's no better way to know what something is worth than  
13 what people will actually choose when faced with a choice.  
14 80 percent of identically situated claimants clearly think  
15 that their direct claims against the Sackler cannot close  
16 the more than \$5.5 billion gap between what people are  
17 getting under the Plan to help their citizens in these  
18 terrible times. And the alternative, whose worst feature  
19 would be creditors fighting one another and competing  
20 another.

21 And for the record, Your Honor, the \$5.5 billion  
22 number that I have been using is exceedingly conservative  
23 because it does not take into account, as our evidence shows  
24 recoveries on insurance proceeds, which we hope are the  
25 billions, and terminal asset value when NewCo is monetized,

1       that it's slated also to flow all but exclusively to  
2       governmental creditors, these very objecting creditors, for  
3       abatement with its multiplier under the Plan.

4               I also didn't count PHI, which many people believe  
5       itself could be worth billions, especially to states by  
6       avoiding further damage, and helping their citizens, or the  
7       public spillover multiplier. None of that is in the math.  
8       \$5.5 billion is just the cash in the sworn evidence and  
9       nothing more.

10              And, Your Honor, this is therefore a much more  
11       central plaintiff case than just best interest. The value  
12       hold that any alternative to this Plan, and certainly  
13       liquidation, would create for all creditors, but for the  
14       states far more than anyone else, is way bigger than \$5.5  
15       billion, and it cannot possibly be refilled and then  
16       exceeded by a liquidation and direct suits against the  
17       Sacklers.

18              I should also note, Your Honor, that I did not  
19       include or take into account Mr. Prices argument that Your  
20       Honor Mr. Gold about on Monday, that over \$4 billion out of  
21       the \$10.4 billion in cash that the Sacklers took out of  
22       Purdue, which in 2008 and 2019, went directly -- directly to  
23       state and federal governments at the Sacklers' request to  
24       pay their person income taxes. Because they set Purdue up  
25       as a limited partnership, the Sacklers, it's not a taxpayer.

1 I believe, Your Honor, cited a figure of \$285  
2 million in the Atkinson declaration about Connecticut;  
3 ironically, the objector on best interest ground. And the  
4 federal government whose number is 10 times that, who might  
5 face serious exposure as the transferee's a preferential  
6 transfers that were made for the benefit of the Sacklers.  
7 There is a day they have to pay that money back so that all  
8 creditors could share it, not just the data to keep it.

9 And that also goes into best interest because in a  
10 liquidation, that money might come back into the estate to  
11 be shared by all. But as I said, I left many, many things  
12 out of my core analysis because it was enough.

13 To assume, Your Honor, that 80 percent of the  
14 states are wrong about what is in the best interest of  
15 states is not rational. And even out of the nine objectors,  
16 only two states and D.C. even made the objection at all,  
17 which is more telling. States have accepted the Plan, as  
18 all other creditors have, by an overwhelming margin -- all  
19 other creditor classes and groups have because they believe  
20 that while it is painful and difficult and horrible to the  
21 lives of many to leave the Sacklers with wealth, the Plan  
22 furthers their best interests and provides value billions in  
23 excess of what would result from the meltdown of the estates  
24 and resuming the litigation free-for-all that prevailed  
25 before these cases began.

1           Your Honor, except for lawyers, nobody does better  
2           in a liquidation, nobody, which would destroy so much that  
3           so many have worked for so long to bring -- to bring to  
4           fruition, to help victims and abate the opioid crisis. We  
5           ask that the best interest objection be overruled.

6           THE COURT: Okay. Thanks.

7           Mr. Goldman, I think you're taking this on behalf  
8           of Connecticut, Maryland, and D.C.?

9           MR. GOLDMAN: Yes, Your Honor, and I can add to  
10          that list since we have been coordinating among all the  
11          objecting states, and the states of Oregon, Delaware,  
12          Vermont, Rhodes Island, and Maryland, and Washington.

13          THE COURT: Okay. Although I don't think any of  
14          those actually raised this issue.

15          MR. GOLDMAN: I would correct the record, Your  
16          Honor. Washington and Oregon did join in our objection at  
17          Paragraph 104 of their objection.

18          THE COURT: Okay.

19          MR. GOLDMAN: So, there are actually five -- well,  
20          four states and the District of Columbia that are advancing  
21          this objection.

22          THE COURT: Okay.

23          MR. GOLDMAN: So, let me proceed. I think Mr.  
24          Huebner did a good job of explaining the best interest test,  
25          but if I could just go over it briefly to set the framework



1 for my argument? As you mentioned, it requires that in a  
2 peered class of creditors, each of the class members must  
3 either accept the Plan or will receive under the Plan, at  
4 least as much as they would receive in a Chapter 7.

5 THE COURT: Actually, that isn't the specific  
6 language of 1129(a)(7), right? The provision says, "With  
7 respect to each impaired class or claims... each holder of a  
8 claim or interest of such class has accepted the plan; or" -  
9 - and then here's the key language -- "will receive" will  
10 replayed -- "or retained under the plan on account of such  
11 claim... property of a value as of the effective date of the  
12 plan that is not less than the amount that such holder would  
13 so receive or retain if the debtor were liquidated under  
14 chapter 7 of this title". I emphasize the word, "so"  
15 because I think it's arguably there for a reason. And as  
16 the AHC objection points out, it would seem to modify on  
17 account of such claim, and therefore, focus the Court on the  
18 claims' recovery in Chapter. 7, as opposed to just recovery  
19 generally.

20 I don't know if you have a response on that point?

21 MR. GOLDMAN: Of course, both the courts in  
22 Quigley and Dietech have rejected that --

23 THE COURT: They -- well, actually, they didn't  
24 reject it in that the argument wasn't made to them. There's  
25 no discussion of that reading or the meaning of the word, or

1 -- of "so" in that provision, in either of those cases that  
2 they cite. But I appreciate that Judge Garrity and Judge  
3 Bernstein are certainly -- or -- but Judge Bernstein's now  
4 retired, so are or were certainly excellent judges, but it's  
5 an argument that's been made to me that I don't think was  
6 made to them.

7 MR. GOLDMAN: Well, I would point out first that  
8 the Debtor has not argued for any back in their brief --

9 THE COURT: But AHC did. The --

10 MR. GOLDMAN: Yes.

11 THE COURT: -- the Ad Hoc group of governmental  
12 entities.

13 MR. GOLDMAN: I would -- I would respond that I  
14 don't think "so" would change the idea that was expressed in  
15 the Dietech and the Quigley cases, that in the Chapter 7,  
16 those creditors would be retaining on account of their  
17 claim, rights against third parties. That plan proposes two  
18 weeks.

19 So, I would argue that the single word "so" would  
20 not alter the analysis that was articulated in both of those  
21 cases that where they distinguished between the Chapter 13  
22 test, which doesn't include the word "retain," to conclude  
23 that what they would retain in Chapter 7 is the right to go  
24 against third parties who are proposed to be released.

25 THE COURT: Okay. Well --

1 MR. GOLDMAN: That's -- that's fair.

2 THE COURT: -- again, I -- as I said to Mr.  
3 Huebner, I'm not sure ultimately this matters because I  
4 think consistent with the section of the Quigley case as  
5 well as other cases that have considered plans that have  
6 sought to impose a third-party release or injunction, it is  
7 incumbent on the Court to look at what's being given up  
8 under the plan in terms of evaluating that request, whether  
9 or not it's under 1129(a)(7), too.

10 So, I just wanted to note the issue. I -- to me,  
11 I can't ignore the word. I will note also that "claim" is  
12 not defined as a claim against the debtor in 1015 of the  
13 Code. On the other hand, it would, I think, open up a  
14 fairly large can of worms if courts started to look at all  
15 sorts of recoveries from third-party sources, that one would  
16 get under it in Chapter 7 as a mandatory exercise for  
17 confirming a plan.

18 But maybe it's -- maybe it's academic given the  
19 larger point that I think controls here, which is that I  
20 have to look at -- beyond the 9019 analysis because that  
21 really applies to the Debtors' estate and creditors -- what  
22 it is that the injunction of third-party claims would  
23 deprive the objectors of, or alternatively, whether it's  
24 actually a fair deal for them.

25 MR. GOLDMAN: May I proceed, Your Honor?

1 THE COURT: Sure. Yes. Go ahead.

2 MR. GOLDMAN: Okay. So, as the Dietech court  
3 observed, according -- from an earlier Southern District  
4 case, the command of Section 1129(a)(7)(ii) is perhaps the  
5 strongest protection creditors have in Chapter 11.

6 I think Mr. Huebner's argument that because 80 or  
7 90 percent of the states have accepted the Plan, should  
8 somehow mean that the best interest test is satisfied.  
9 Well, if you go with the majority or super-majority of  
10 creditors who are voting in favor of the Plan, that  
11 essentially wipes out the purpose of the best interest test,  
12 which was -- is to protect the dissenting creditors. It's a  
13 totality to say that because the majority voted yes, they  
14 must be right.

15 That is a sophistic, S-O-P-H-I-S-T-I-C --

16 THE COURT: Right.

17 MR. GOLDMAN: -- argument.

18 THE COURT: Right. The purpose of the test is --

19 MR. GOLDMAN: So --

20 THE COURT: -- really to protect the minority on  
21 your -- I understand that.

22 MR. GOLDMAN: Fine. And the Plan proponent bears  
23 the burden of proof to demonstrated with evidence that the  
24 test has been satisfied. They can't shift to the burden to  
25 the dissenting creditor, as suggested by Mr. Huebner, to

1     prove what it would recover on its direct claims. It's the  
2     Debtors' burden of proof on best interest.

3             And just to remind the Court, the dissenting  
4     creditors here are California, Connecticut, Delaware, the  
5     District of Columbia, Maryland, New Hampshire, Oregon, Rhode  
6     Island, Vermont, and Washington.

7             And the best interest of creditors requires a  
8     comparison of what those dissenting creditors would receive  
9     under the Plan, and what they were to receive in a  
10    hypothetical litigation. It doesn't say what all of the  
11    Class 4 creditors would receive under the Plan in relation  
12    to what they all would receive in a liquidation. The  
13    analysis is focused on the dissenting creditors. And for  
14    that first part of the test, the Debtors did not even  
15    present evidence of the amount the dissenting creditors  
16    would receive under the Plan.

17            Now, although Mr. DelConte testified that it would  
18    be a multiplication exercise --

19            THE COURT: No, I actually have --

20            MR. GOLDMAN: -- based on the allocation --

21            THE COURT: -- I actually have a chart of what  
22    each of those states would receive under the Plan and I  
23    don't think that's controverted.

24            MR. GOLDMAN: Well, my point is, they didn't  
25    present evidence of that, Your Honor, prepare a chart. It -

1 - like --

2 THE COURT: I mean, I believe it's -- I believe  
3 it's in the record. I -- we -- I didn't -- we didn't make  
4 it up.

5 MR. GOLDMAN: Be that as it may, they didn't  
6 present it in their brief as to what we would receive or in  
7 argument to make the comparison of what we would receive in  
8 a liquidation.

9 And on the other side of the equation --

10 THE COURT: Oh, I'm sorry. I thought you -- I  
11 don't have a specific number of what they would receive in a  
12 liquidation. I do have what they would receive under the  
13 Plan, at least an estimate of what they would receive.

14 MR. GOLDMAN: That's what I meant. That's what I  
15 meant, so I acknowledge that.

16 THE COURT: Okay.

17 MR. GOLDMAN: All I'm saying is there wasn't --  
18 that wasn't presented by Mr. DelConte, it was presented in  
19 the Debtors' brief as to what we would receive, to make the  
20 comparison.

21 And on the other side of the equation, because in  
22 Chapter 7 there would be no third-party releases, it's our  
23 contention there must be some proof of what the dissenting  
24 states would receive if they were permitted to go forward  
25 against the Sacklers. And yet, no such proof was provided.

1           Mr. DelConte testified that no attempt was even  
2       made to estimate or project what the dissenting states would  
3       recover on claims against the Sacklers. That was at the  
4       8/13 Transcript, Page 61. And that his liquidation analysis  
5       did not include the value for any of the direct claims of  
6       Purdue creditors against any of the Sacklers. Ant that was  
7       at Page 58 of his testimony.

8           Indeed, the Debtors did not even attempt to  
9       ascertain university -- universal creditors in these estates  
10      that are asserting claims against the Sacklers. We  
11      acknowledge that Mr. DelConte, at Page 57 of his testimony,  
12      that failure stands in stark contrast to the evaluation that  
13      was done in the Dietech case by Alex Partners. He should  
14      have at least attempted to identify and put a settlement  
15      value on the consumer claims that would have survived in  
16      Chapter 7 case in Dietech, and could have been asserted  
17      against the buyer of the consumer credit agreements there.

18           The Debtors attempt to excuse their lack of proof  
19      with the argument that the claims are speculative but not  
20      capable of estimation, that is not supported by anything  
21      other than the Debtors' counsel's say-so. The same argument  
22      was made by the debtors in Dietech and it was squarely  
23      rejected.

24           THE COURT: Well, it --

25           MR. GOLDMAN: There, the --

1 THE COURT: -- it was made, but obviously it was  
2 rejected because they'd actually quantified them.

3 MR. GOLDMAN: They tried -- they tried to quantify  
4 them, and the court held that that was not acceptable proof.  
5 And the consumer claims there that would have been  
6 extinguished if --

7 THE COURT: But even as -- even as quantified,  
8 there was no countervailing benefit at all in return for  
9 them.

10 MR. GOLDMAN: In the sense of -- I'm not sure I  
11 understand what Your Honor means.

12 THE COURT: There was no showing of any real  
13 benefit to the -- to the consumers that were giving up those  
14 claims other than the \$5 million. So, you had \$252 million  
15 versus \$5 million.

16 MR. GOLDMAN: Well, I understand that, Your Honor,  
17 my -- my point is that the claims -- the consumer claims --  
18 that would have been extinguished under the Plan by the 363  
19 Sale of the consumer credit agreements, would have been  
20 available to assert against the buyer in Chapter 7, a buyer  
21 of the consumer credit agreements. And they were based on  
22 very attenuated claims.

23 There were account misstatements, claims --  
24 wrongful -- claims of wrongful foreclosure, unfair  
25 collection practices and the like, and they gave rise to



1 potential claims under the Real Estate Settlement Procedures  
2 Act, the Truth in Lending Act, Fair Credit Reporting Act,  
3 and Fair Debt Collection Practices Act. All those claims  
4 were unliquidated.

5 And based on the analysis done by Alex Partners,  
6 3,900 proofs of claim were identified as being consumer-  
7 related, and 265 proofs of claim having been matched to  
8 pending litigation. No such analysis was done in this case.

9 THE COURT: But in -- in Dietech, Dietech and its  
10 predecessor had a history of dealing with these types of  
11 claims and with settling them, which was a basis for Alex  
12 Partners' analysis.

13 What I have here is something more attenuated. I  
14 have the settlements from the 2007 period. I have the  
15 settlement with the State of New York where the Sacklers  
16 themselves paid \$75,000. I have the settlement more  
17 recently with the State of Oklahoma, where they paid \$75  
18 million. And I have a number of complaints, some of which  
19 have survived motions to dismiss, although largely on  
20 procedural grounds -- those motions being made largely on  
21 procedural grounds, such as noncompliance with federal law,  
22 preemption, or jurisdiction grounds. So, you just don't  
23 have the same type of track record here.

24 MR. GOLDMAN: You don't have the same type of  
25 track record, but I would point out that in neither of those

1 cases did the court hold that some sort of settlement  
2 history was a prerequisite to, you know, the finding that  
3 they weren't speculative or remote.

4 THE COURT: That's true.

5 MR. GOLDMAN: There was a settlement --

6 THE COURT: But they -- but they did rely on the  
7 settlement history.

8 MR. GOLDMAN: Oh, well, it's -- it would be hard  
9 to dispute that, Your Honor, and I do agree. However, I  
10 would point out in Dietech that the settlement history was  
11 only for about a year and a half, and it didn't include that  
12 many claims. That's not to say that because there is no  
13 settlement history, by necessity, claims are speculative and  
14 remote.

15 Remember, the Debtors, as Mr. Huebner pointed out  
16 in a prior hearing, there were a total of 18 experts that  
17 were hired in this case, albeit not all of them by the  
18 Debtor. And I find it more than curious that on this one  
19 issue, given all those experts and how creative the Debtors  
20 have managed to be in this case, didn't present any expert  
21 even on the issue of whether the claims themselves were  
22 speculative and incapable of estimation. They're just  
23 asking you to make that conclusion based on their say-so.

24 Mr. DelConte was not an expert on estimating  
25 claims or affixing damages. He said -- he gave the party

1 line, that, well, we just didn't feel comfortable that we  
2 could estimate these claims. But he wasn't the expert that  
3 was hired to do it. In fact, he acknowledged that the  
4 Debtors didn't hire an expert to do that or even to tell the  
5 Court that they weren't estimable.

6 THE COURT: Fair point.

7 MR. GOLDMAN: I just, again, point out and I  
8 recognize the difference on settlement history, but in  
9 Pfizer -- or Quigley as well, the claims were unliquidated  
10 and disputed, albeit there was some history for the court to  
11 evaluate. But again, my point is, it's not a necessary  
12 condition. No court has held that. And in Dietech, none of  
13 the consumer claims at issue have even gone to judgement.

14 I would also point out that --

15 THE COURT: But there had been -- but there had  
16 been other consumer claims that had gone to the stage where  
17 they were settled.

18 MR. GOLDMAN: Correct. And my point is they  
19 hadn't gone to judgment.

20 THE COURT: These particular ones, yeah.

21 MR. GOLDMAN: Yes, yes.

22 THE COURT: But I think there were similar claims  
23 that had gone to judgment as well as some being settled. I  
24 mean, frankly, I think they're some that have been ruled on  
25 in the Southern District Bankruptcy Court.

1 MR. GOLDMAN: Your Honor, I'll defer -- I'll defer  
2 to you on that. I just -- I don't -- my -- I thought that  
3 based on the settlement data they had, that none had gone to  
4 judgment, but I'm not completely sure about that --

5 THE COURT: Okay.

6 MR. GOLDMAN: -- now that Your Honor has raised  
7 the point.

8 The fact -- it's ironic that the fact that no  
9 settlement and litigation data is available here is the  
10 result of the Debtors' own doing. I mean, the states have  
11 been prevented from continuing with actions against the  
12 Sacklers for almost two years by the preliminary injunction,  
13 that the Debtors were asked -- weren't even successful in  
14 getting. They shouldn't be able to turn around now and use  
15 that standstill to argue that the claims can't be valued  
16 because there's no settlement data.

17 But if the states had been permitted to go  
18 forward, we may very well have had some settlement data or  
19 judgments in either direction for the Court to make a  
20 decision on this task.

21 THE COURT: But I guess that goes to the other  
22 point, which is the primary point I think that the Debtors  
23 have been making, which is they have focused only lightly on  
24 the strength of the states' claims against the Sacklers and  
25 very heavily on the recovery that the states would have on

1       those claims.

2               MR. GOLDMAN: They haven't focused.

3               THE COURT: They have focused primarily on the  
4       recovery that the states would have on those claims.

5               MR. GOLDMAN: Yes. And I -- I will get to that.

6               THE COURT: Okay.

7               MR. GOLDMAN: Point, Your Honor. But before I do  
8       that, I'd like to address the argument that they make in  
9       their brief that in order for it to be true that holders of  
10      all third-party claims would be better off in a liquidation  
11      because of the value of claims released under the Plan, the  
12      aggregate recovery due in those claims, it would be -- it  
13      exceeds \$4.8 billion.

14              Now, Mr. DelConte confirmed, the Debtors made no  
15      attempt to even ascertain the universe of creditors that are  
16      asserting claims against the Sacklers. The Debtors are  
17      simply assuming that every creditor in the case would assert  
18      claims against the Sacklers and that all those claims would  
19      be completely homogenous, would not vary in their merit, or  
20      type of claim, and that is simply not a valid assumption.

21              They did not do the analysis that was done in  
22      Ditech to see which creditors were asserting claims against  
23      the Sacklers, and I'm not aware of any proof of claim in the  
24      case that was asserted against the Sacklers as opposed to  
25      the Debtor.

1           Second, the best interest test requires looking at  
2       what the dissenting creditors would receive on their direct  
3       claims. We'll recover, I acknowledge recovery, and now with  
4       the holders of all third-party claims, which the Debtors  
5       haven't even identified, would receive, in a hypothetical --

6           THE COURT: But I think the point is the dilutive  
7       effect of the claims that actually are, we know, just leave  
8       it to that. The claims of the individual states filed  
9       against the Debtors, and I think we know a fair number of  
10      the governmental entities, non-state governmental entities,  
11      as well as the liquidated value of those claims.

12           I think their point is that even if you confine it  
13      to that aggregate amount, there would be an enormous  
14      dilutive effect, not that you would measure what the others  
15      got, but that the effect of their pursuit of those claims  
16      would dilute the objector's recovery, along with various  
17      other things too, like the cost and delay.

18           MR. GOLDMAN: I do understand the point, but I'm  
19      not sure that it's a valid assumption that every state is  
20      asserting claims against the Sacklers; not all states did  
21      file claims against the Sacklers. I don't think any effort  
22      was made to identify which complaints were actually filed.  
23      And if they weren't filed, which states intended to make  
24      claims against the Sacklers, but not because of the Chapter  
25      11 filing in September of 2019 and the preliminary

1 injunction.

2 So my point is they simply haven't been  
3 identified. They've asked Your Honor to assume that  
4 everyone would make claims against the Sacklers, but there  
5 really is no evidence that all of them would is my point.

6 And as to the competing claims of the estates  
7 against the trust, I would submit that analysis ignores that  
8 if just three states get judgments against one or more of  
9 the Sacklers, they could be put into involuntary bankruptcy  
10 where the interest in their offshore trusts would be  
11 susceptible to becoming property of their estates. No  
12 analysis was done on the effect of a potential bankruptcy  
13 filing and what that would mean in terms of their interests  
14 in the trusts and whether the estates' claims against the  
15 trust would prevail or have priority over those interests  
16 that could possibly become property of the estate.

17 THE COURT: Can we just --

18 MR. GOLDMAN: There's no --

19 THE COURT: I think you're making two points there  
20 and I want to just make sure I understand them.

21 There would be estate claims that would be  
22 asserted by Purdue in a liquidation against the trust,  
23 fraudulent transfer claims. We do have expert testimony on  
24 that, and as well as the recoverability of that. Parties  
25 have said that they would dispute it if, in fact, there was

1 litigation, but they haven't disputed it in this case.

2 Under the stipulation, there's no adverse consequence to  
3 them for having not disputed it.

4 And then I think you're saying that in a Sackler  
5 parties bankruptcy, the assets of the estate or his or her  
6 estate would become property of the estate. But there is  
7 testimony, I believe, that most, if not all, of those trusts  
8 are spendthrift trusts, which you would have to adjudicate  
9 in, I believe, Jersey.

10 MR. GOLDMAN: Well, to the extent those trusts are  
11 self-settled with monies from the settlors, I think they're  
12 vulnerable to attack. The cases cited by the Debtor in its  
13 brief about the Greenwich v. Tyson case in Connecticut, they  
14 all presume that the trusts were not self-settled. Self-  
15 settled trusts are not given protection from creditors.

16 So I would just make the point that they could be  
17 vulnerable to that type of challenge in an individual  
18 bankruptcy. But even getting beyond that, you know, the --

19 THE COURT: But again, there would be a factual  
20 determination of that in a Sackler bankruptcy, an individual  
21 Sackler personal bankruptcy, but then you'd have to enforce  
22 that judgment against the assets of the trust, which I think  
23 mean you'd have to go through Jersey. And when I say  
24 Jersey, I don't mean the state of New Jersey, I mean the  
25 bailiwick of New Jersey.



1 MR. GOLDMAN: I understand. I understand what you  
2 mean.

3 THE COURT: Right.

4 MR. GOLDMAN: And I acknowledge that, Your Honor.  
5 But I know the states, the states would be poised to do that  
6 I'm sure.

7 THE COURT: Well, they might well be poised, but  
8 they didn't cross-examine Mr. Cushing on their ability to  
9 actually move from being poised to collecting.

10 MR. GOLDMAN: Well, I'm merely pointing out that  
11 that analysis on the bankruptcy aspect of this was not done  
12 in terms of an individual bankruptcy of any of the Sacklers  
13 that might suffer judgments from the states.

14 And beyond that, I'm presuming since they would be  
15 themselves the subject of Chapter 11 cases, their post-  
16 bankruptcy income would also become part of their estates  
17 and, you know, going forward.

18 So the trust would not be the only source of  
19 recovery. You'd also have their interest in the IACs that  
20 would come into their bankruptcy estates and potentially --  
21 well, basically, all of their assets and interest in  
22 property, and no analysis was done on that.

23 And I think that it's important that it had to  
24 have been done because in the absence of a confirmed plan  
25 and if the states are committed to go forward, we would

1 maintain it's likely that the estates would obtain judgments  
2 against one or more of the Sacklers and is a likelihood that  
3 they could be subject to a bankruptcy proceeding.

4 And I would just also note that this idea that the  
5 disclosure statement and the assumption that these claims  
6 are just speculative and not capable of estimation shouldn't  
7 be held to satisfy their burden of proof on the best  
8 interest of creditors test, given its importance to  
9 dissenting creditors like the ones we have here.

10 As the Bankruptcy Court stated in In re. Mcorp,  
11 137 B.R. at 228, a proposed plan of reorganization may not  
12 be confirmed where the evidence is not sufficient on which  
13 to base an independent determination that the proposed plan  
14 is in the best interest to creditors. And I submit that was  
15 not done here.

16 Just to briefly address a few points that Mr.  
17 Huebner made. I don't want to forget those.

18 I viewed his point that we can't prove the  
19 authority that we can prevail on our claims or get a  
20 recovery as effectively shifting the burden of proof on the  
21 best interest of creditors test. It's not our burden to  
22 prove what we would recover. They made this point in their  
23 brief that we didn't submit expert testimony on what we'd  
24 recover. It's not our burden of proof.

25 On this issue of the taxes that Connecticut and

1 other states may have received from the tax distribution, I  
2 think is a complete red herring. Each of the states was  
3 immediate transferee of that money. So if we took in good  
4 faith and without knowledge, we're protected under Section  
5 550, and there's no colorable claim that the states didn't  
6 take tax money in good faith.

7 With that, Your Honor, I --

8 THE COURT: So the states -- I mean, I think -- I  
9 don't want to really -- I think that the personal injury  
10 claimants would say, well, who was supposed to be regulating  
11 Purdue if not its home state and the federal government, the  
12 two of which got the most taxes. So I guess that comes down  
13 to whether a failure regulation warrants any sort of either  
14 presumption of knowledge as to the taxes or some basis to  
15 subordinate claims.

16 MR. GOLDMAN: I understand the theory, Your Honor.  
17 I'll just say that is quite a stretch.

18 THE COURT: Well, I think it would be an argument.  
19 Let's leave it at that.

20 MR. GOLDMAN: I'm happy to leave it at that, Your  
21 Honor.

22 THE COURT: And personal injury lawyers, I'm sure  
23 wouldn't hesitate to make it; whether it'd win or not is  
24 another story.

25 MR. GOLDMAN: With that, Your Honor, I'll give the

1 floor to any rebuttal.

2 THE COURT: Okay. Thank you, Mr. Goldman.

3 MR. GOLDMAN: Thank you, Your Honor.

4 MR. HUEBNER: Your Honor, I think I'll be  
5 relatively brief, but there are some things that were said  
6 that -- there were quite a few things that were said  
7 factually, but I think it's worth letting everybody know it.

8 And, you know, this is actually a much more  
9 important conversation that he raised than just best  
10 interests because in many ways, this is the heart of  
11 everything, which is why are so many people in favor of  
12 doing this as opposed to its alternative. And so, I  
13 actually embrace a demanding Third Circuit standard that  
14 this is the fairest, best outcome under extraordinary  
15 outcomes, which is why we didn't actually brief that Ditech  
16 don't really apply, someone else did, because we're fine  
17 within the plan.

18 And here you asked me a few days ago during cross-  
19 examination to not get into conceptions of justice and  
20 fairness, but let's talk about a few things that are more  
21 directly relevant to the statute. Number one, Your Honor,  
22 is you've heard me say many times, I have never once ever  
23 defended Purdue's past conduct or the Sacklers. We arrived  
24 in March 2018.

25 But the facts are that it was not the Sacklers who

1     paid \$75,000 to New York State; it was Purdue. And in  
2     Oklahoma, the Sacklers were not even sued; Purdue was sued.  
3     And Purdue paid to settle that for a variety of reasons and  
4     the Sacklers were not parties to the consent judgment and  
5     made a voluntary contribution of \$75 million. Might those  
6     suits have expanded and were they thinking lots of complex  
7     things when they settled? They are not my clients and never  
8     have been, so I don't know and it's not my business.

9             But the facts are that there is no track record, I  
10    believe, which is part of what angers so many people, of the  
11    Sacklers actually having had judgments entered against them.  
12    I believe there are none.

13            Your Honor, the first point -- and I appreciate  
14    the references both to sophistry and to tautologies -- are  
15    simply not correct. In many cases, an individual member of  
16    the class is differently situated and has a third-party  
17    claim that many others might not have. They might be  
18    properly classified in the same class vis-à-vis the Debtors  
19    but have a unique opportunity to recover more than in a  
20    liquidation because they have third-party claims that could  
21    be pursued that the plan would take away.

22            And if those claims are not speculative and  
23    reasonably capable of estimation, which is the best possible  
24    law for Mr. Goldman's clients, then they have a real  
25    argument.

1           Here, it is absolutely appropriate to take  
2       judicial notice of 50 states, 48 states, 38 states that I  
3       will argue in more detail in a few minutes are, in fact,  
4       virtually identically situated, have made the same choice.  
5       So, in fact, it's neither a tautology nor is it sophistry.

6           Number two, Your Honor. We fully accept that it  
7       is our burden, but the Court has to consider everything  
8       including what the objectors bring as part of raising an  
9       objection and one page in a brief with no claims that they  
10      would actually do better and nothing to suggest it. Even  
11      now, no one has ever said I know a better way where  
12      creditors get more, I know a better way where victims get  
13      more redress. If someone thought that was really the case  
14      after \$500 million in legal fees, maybe they should have  
15      just said it.

16          Your Honor, with respect to burden, let's talk  
17      about the facts in the record. The allocation chart among  
18      the states about what each one is getting goes to, like,  
19      nine decimal places. I'll read one example: Alabama,  
20      \$1.6579015983 percent. The Debtors had no involvement in  
21      that. The states worked it out amongst themselves and  
22      decided how much each one was getting and then handed it to  
23      us and said please staple it to the documents and file it on  
24      the docket, which we did at No. 3232, Exhibit C, Schedule 3.  
25      Don't take it from me. Take it from them.

1           Then there's Mr. DelConte's testimony under oath  
2           in these proceedings that perhaps the objectors did not  
3           remember. We're all dancing faster than anyone should have  
4           to. So I quote, this is from the transcript on August 13th  
5           at Page 72, beginning at Line 9. The questioner was Mr.  
6           Kaminetzky. The witness under oath was Mr. DelConte.

7           "Q: And could you tell the Court why is it that  
8           you didn't account or put a value on those causes of  
9           action?" This is in response to the questions that he got  
10          about direct claims.

11          "A: We did not. We determined that we couldn't  
12          adequately estimate the value of those potential claims, you  
13          know, based on the fact that, as I testified before and as  
14          laid out in the disclosure statement, the fact that there's  
15          a number of different causes of action that various third  
16          parties could have against the shareholders, as well as a  
17          number of defenses that the shareholders could have against  
18          those particular causes of action and the fact that none of  
19          these causes of action had been taken to judgment to date.  
20          We didn't think that we were accurately able to estimate  
21          what the total value should be, so we determined that we  
22          should not include that in the liquidation analysis."

23          He testified under oath in a Federal Court that  
24          the claims were not estimable.

25          THE COURT: But he is not --

1 MR. HUEBNER: (crosstalk) requires --

2 THE COURT: He is not a lawyer, and Mr. Goldman's  
3 point is that he thinks you could have provided a lawyer who  
4 would testify as to why it would be speculative. What is  
5 your response to that?

6 MR. HUEBNER: Your Honor, apologies, Your Honor.  
7 I'm actually going to get to that with cites and more in a  
8 few moments if that's okay with you as part of the flow.

9 Your Honor, the next issue is that, you know, with  
10 all due respect, he actually ignored every single one of my  
11 11 points, right, and it's basically now agreed, as the  
12 record makes clear, that the five to six to seven billion  
13 dollars of Debtor value is gone in a liquidation.

14 What he did was he said there's no evidence of  
15 what we get in a liquidation; that's false. In two of the  
16 three scenarios in the declaration, Class 4 creditors share  
17 zero. If Connecticut's percentage is 1.3490069542 of zero,  
18 it is still zero.

19 The third scenario, which is the only one where  
20 they would get anything, they share \$699 million, compared  
21 to the five to six to eight billion dollars that states  
22 alone are sharing under the plan. I can't get anyone -- I  
23 couldn't get a bevy of supercomputers to testify what  
24 Connecticut would likely end up with out of \$699 million.  
25 When all the intercreditor deals were voided, Mr. Shore



1 moved to subordinate their claims. We had \$400 trillion --  
2 trillion of projected non-state claims against their 2.156  
3 trillion.

4 To say that I need a lawyer under oath to say  
5 nobody could possibly in the universe credit a material  
6 recovery that Connecticut in a liquidation I think is not  
7 what -- that's arguably sophistry. I mean, the facts are so  
8 clear, and they're not arguing to the contrary. They're  
9 just saying we don't have to prove anything. We think we've  
10 met our burden by miles.

11 And let me keep explaining why, Your Honor. Your  
12 Honor, we sort of covered this and, you know, it's not  
13 curious that there's no expert. There's no expert because  
14 it's so obvious and so unassailable that if everyone chases  
15 the Sacklers -- and everyone is everyone -- it's unknowable  
16 what any individual creditor gets.

17 Think about what Mr. Goldman had to argue. Oh,  
18 maybe many of the states won't sue the Sacklers. They'll  
19 just say, you know, even though we're going to get nothing  
20 from this case because the Debtors melted down, the company  
21 was destroyed, and we couldn't get that value and we lost  
22 PHI, we'll let our brother and sister states go through the  
23 Sacklers and we'll just stay home and wish them the very  
24 best while our citizens get zero, zero from the Sacklers,  
25 zero for abatement.

1 I mean, it's not -- it's just so far beyond the  
2 pale to have to respond to an assumption. I mean, I could  
3 ask Mr. Eckstein to speak after me and confirm that there's  
4 no state anywhere that's going to allow others to sue the  
5 Sacklers while they do nothing. They all have identical,  
6 similar, analogous, different causes of action. The only  
7 reason the Sacklers are named in some complaints and not  
8 others is because of the Chapter 11, which we'll discuss in  
9 a minute.

10 In fact, you know what? Let's discuss it right  
11 now, because it's just so not right that almost two years  
12 in, we're still hearing what is truly -- and I don't mean  
13 this unkindly -- a canard about the PI blocking information  
14 flow.

15 So let me remind everybody. The preliminary  
16 injunction was supported by the Official Committee of  
17 Unsecured Creditors on behalf of everybody as the statutory  
18 fiduciary appointed by the Department of Justice to  
19 vindicate all of Purdue's creditors as best they know how.  
20 They were supported by the AHC.

21 THE COURT: If I could interrupt. I think Mr.  
22 Goldman's point was not about -- he was not saying there was  
23 a lack of information about the Sacklers or claims that  
24 might be asserted against them.

25 I think what he was saying is that they -- certain

1 states at least would have gotten a judgment but for the  
2 injunction and, therefore, the claims could be -- the face  
3 amount of the claims could be treated as something that  
4 there is evidence on.

5 MR. HUEBNER: So, Your Honor, that's exactly where  
6 I was about to go.

7 THE COURT: Okay.

8 MR. HUEBNER: I was first noting, because people  
9 keep implying that the injunction was somehow put in place  
10 for the benefit of the Sacklers --

11 THE COURT: Well, I don't think Mr. Goldman was  
12 doing that.

13 MR. HUEBNER: -- and wanting to be farther --

14 THE COURT: I don't think he could because that's  
15 not -- he wasn't doing it and he couldn't have done it  
16 because it's not --

17 MR. HUEBNER: Correct.

18 THE COURT: -- the fact.

19 MR. HUEBNER: So now let me address the actual  
20 point.

21 THE COURT: Okay.

22 MR. HUEBNER: I agree, and it was both nothing and  
23 too much at the same time. As Your Honor might remember the  
24 state of Washington actually said when reading the  
25 injunction, please let just us proceed to trial because

1 we're very far along and we think it would be helpful.

2           You've never heard me ever dispute the strength or  
3 validity of any individual claimant's claim against the  
4 Sacklers. The problem is one creditor winning against the  
5 Sacklers only supports the likelihood that all creditors  
6 would win against the Sacklers, and if all creditors win  
7 against the Sacklers, no individual creditors' recovery is  
8 knowable. But what is knowable is that four, five, six,  
9 seven, eight billion dollars that is already on the table  
10 evaporates and creditors have to do better trying to share  
11 only what they get against the Sacklers in that scenario,  
12 and that's my argument.

13           You know, the notion of Mr. Goldman having to say,  
14 you know, only a small number of states might sue them, it's  
15 just so -- I don't even know what to say in response to  
16 that. We can line up 100,000 creditors right now at the  
17 podium to say I swear I will sue the Sacklers along with  
18 suing Purdue to recover for the acts of this company and its  
19 owners, and everyone on the planet knows it.

20           Your Honor, Mr. Gold then -- Mr. Goldman, I'm so  
21 sorry. Mr. Goldman then sort of testified and sort of  
22 speculated that in a subsequent Sackler bankruptcy, if that  
23 happened, we would all do better because maybe they go into  
24 Chapter 11 and maybe their trusts would be brought in and  
25 maybe they're not self-settled trusts and maybe we could get

1 all their assets.

2 Well, here's my answer to that. With all due  
3 respect to Mr. Goldman, who is in the 1/500th of 1 percent  
4 of our creditors who objected to confirmation, many of us  
5 have spent years figuring out how to get the best deal and  
6 analyzing the all risks and rewards.

7 And here's the testimony, which is in evidence,  
8 from Mr. Atkinson, whose declaration is extraordinarily  
9 important and attaches the UCC letter which went out to all  
10 creditors and is extraordinarily important. Paragraph 11:

11 "At the outset of these Chapter 11 cases, Akin and  
12 Province commenced an investigation on behalf of the  
13 Official Committee of among other things, the claims that  
14 could be asserted against the Sacklers and related entities  
15 on behalf of the Debtors' estates. This also included an  
16 investigation concerning the likelihood of success of any  
17 potential estate claims against the Sacklers and related  
18 entities, the likely damages associated with such claims,  
19 and the likelihood of collecting on any judgment rendered in  
20 favor of such claims."

21 Everyone looked at collectability. What does Mr.  
22 Goldman think we were all doing for the last three years?  
23 This is a huge part of what people were doing, people like  
24 the AHC and the UCC and the PIs and the special committee  
25 thought about all of these thing. So like an intellectual

1 colloquy about what might happen in a hypothetical Sackler  
2 bankruptcy which Jersey law and Connecticut and Maryland  
3 law, this is the work that was done for tens of thousands of  
4 hours and all the people suing Purdue and suing the  
5 Sacklers.

6 And nobody but this one objection apparently  
7 believes that there's a better alternative, and this  
8 objection doesn't really believe it either because you'll  
9 notice you never heard anybody say, and you certainly didn't  
10 hear Mr. Goldman say, I actually think my clients would do  
11 better. Nobody could say that, not under oath and not in a  
12 signed pleading.

13 I have tremendous respect for how seriously Mr.  
14 Goldman takes his signature, and unlike other pleadings in  
15 this case, there is nothing in his that an officer of the  
16 court should not be comfortable saying, but I think the  
17 silences are also important. And ironically, I think that  
18 you can take judicial notice of the silences as well.

19 Two final points, Your Honor. In case the record  
20 is somehow not clear, I have never ever said that any state  
21 would not prevail against the Sacklers. My point is  
22 different, and it has always been different, which is we're  
23 back to the tragedy of the commons, is that everybody would  
24 prevail. And we discussed this or there's a risk and the  
25 odds are the same for everybody.

1           And so, Connecticut on its \$50.1 billion claim is  
2     likely to prevail.   o are 47 or 48 or 42 other states and  
3     tens and tens of thousands of other Creditors who suffered  
4     similar injury.

5           Finally, it's not really relevant because I said  
6     it's Mr. Preis' argument and I'm not making it, but right is  
7     right.   So let me be very clear.   Purdue as you have heard  
8     in other context, often in very strong tones, pled guilty to  
9     multiple crimes in 2007 and had a corporate monitor in place  
10    that many of these states participated in the monitoring and  
11    had rights and access to information.   Suffice it to say  
12    that if the Estate is forced to go in a different place and  
13    has to seek fairness in recoveries for all, Mr. Goldman's  
14    sort of testimony again about we're a BFP.   We have no  
15    knowledge, we weren't on notice -- not my theory, not in my  
16    pleadings, but that's something that a lawyer can represent  
17    to a court and I daresay Mr. Goldman has no facts to support  
18    that some day some court might find about who might have  
19    been able to stop this years ago.   I have nothing further.

20           THE COURT:   Okay.   All right.   Why don't we move  
21    on then to the next topic on today's agenda which is the  
22    classification argument made by the objecting states other  
23    than West Virginia, which frankly, I'm not sure at this  
24    point, given the vote, matters that much, but it's on the  
25    agenda and I'll hear it briefly for the time that's been

1 allotted.

2 MR. MCCARTHY: Your Honor, for the record, Gerry  
3 McCarthy of Davis Polk on behalf of the Debtors. Can Your  
4 Honor hear me clearly?

5 THE COURT: Yes.

6 MR. MCCARTHY: So the next item on the agenda, as  
7 Your Honor just noted, which I now will address are the  
8 classification objections of Washington, Oregon, as well as  
9 Connecticut, Maryland, and the District of Columbia. I  
10 believe there were also some joinders by California,  
11 Delaware, Rhode Island and Vermont.

12 The objecting states contended the plan improperly  
13 classifies them with cities, municipalities and other local  
14 governments. That objection should be overruled for two  
15 basic reasons. First, and most importantly, the Debtor's  
16 classification framework is entirely proper. The objecting  
17 states arguing to the contrary is simply incorrect.

18 The Court, I know, is more than familiar with the  
19 straightforward rules governing classification, the first  
20 set forth in Section 1122(a) is that claims or interests may  
21 be classified together if they're "substantially similar."  
22 The second is that a Debtor has a great deal of flexibility  
23 to place similar claims into different classes and can do so  
24 as long as there is a legitimate reason for it, but doesn't  
25 have to. It's the first of these rules that disposes of the



1 issues here.

2 The claims of the states and municipalities are  
3 substantially similar, and thus are properly classified  
4 together. As to the initial matter, these claims are all  
5 unsecured and thus have an identical relationship to the  
6 property in the Debtors' Estate. That alone is sufficient  
7 to classify them together.

8 These claims also arise out of the Debtors'  
9 production, marketing, and sale of opioid medications. In  
10 other words, they arise from the same facts. And although  
11 there is no need whatsoever to get this granular, and there  
12 may so variation state to state, state and municipal claims  
13 also allege many similar theories to recover. For  
14 illustrative purposes, one could compare the complaints of  
15 Seattle and Washington State at JX79 and JX944 respectively.  
16 They both have a certain public nuisance claims under the  
17 same statute, Revised Code of Washington Chapter 7.48. They  
18 both assert consumer protection claims under the same  
19 statute, the Washington Consumer Protection Act.

20 Or one could compare the complaints of San  
21 Francisco and California at JX825 and JX947 respectively.  
22 They too both assert public nuisance claims under the same  
23 statutes, California Civil Code Sections 3479 and 3480, and  
24 the two both assert consumer protection claims under the  
25 same statutes.

1           In addition to the foregoing, the Class 4 claims  
2       were all recovering under and through NOAT, treatment that  
3       the states and local governments specifically negotiated for  
4       and that arose out of the Phase 1 mediation. It is not at  
5       all unusual in Chapter 11 cases that claims arising --  
6       claims recovering under the same trust are classified  
7       together.

8           All in all, the states had no case that even  
9       purports to require, let alone actually holds that states  
10      must be classified from other creditors as a general matter  
11      because that case doesn't exist. To the contrary, multiple  
12      states invariably hold claims in sizeable Chapter 11 cases  
13      including for things like taxes and environmental matters  
14      and the Debtors invariably had discretion to classify states  
15      with other creditors.

16           Here, the states are classified with other non-  
17      federal government creditors which is entirely proper under  
18      the circumstances.

19           Second, Your Honor, as you mentioned at the onset,  
20      the states' objections are essentially moot. If the states  
21      were to be separately classified, the class would be an  
22      accepting class, overwhelmingly so any way you look at it.

23           Christine Pullo from Prime Clerk testified in  
24      Exhibit B of her declaration -- that's at Docket No. 3372 --  
25      that of the 48 states that voted on the plan, 38 voted in

1 favor and 10 voted to reject. That's 79.17 percent of the  
2 states that voted to accept. The number stays basically the  
3 same if one equates the District of Columbia and other U.S.  
4 territories. In that case, Ms. Pullo testified 79.25  
5 percent of the states voted to accept the plan. And that's  
6 Footnote 5 of Ms. Pullo's declaration.

7 If we were to count by population, one would reach  
8 approximately the same results as Washington concedes in  
9 Paragraph 67 of its objection and Connecticut concedes in  
10 Paragraph 63 of its. The states voting to reject the plan  
11 account for roughly 20 percent of the U.S. population.  
12 That's a number that doesn't really vary if you include the  
13 U.S. territories.

14 If one were to go by states on proof of claim, you  
15 would again reach the same result as Washington and  
16 Connecticut concede in those two paragraphs. And if we were  
17 to count by the percentage of allocations each state  
18 received from NOAT, one could reach approximately the same  
19 result too.

20 For all these reasons, Your Honor, the objecting  
21 states classification objection should be overruled. It  
22 shouldn't pass without mention that the objecting states  
23 evoke a number of irrelevant legal doctrines that they  
24 believe demonstrate that their claims are different in class  
25 from those of local governments. These certain notions of

1 state sovereignty and a so-called Dillon Rule. Suffice it  
2 to say that none of these doctrines in any way mandate  
3 separate classification here.

4 I will now turn the virtual podium over, unless  
5 Your Honor has any questions, to Mr. Maclay who represents  
6 the Multi-State Entity Group and who I understand will  
7 address some of the points that I just mentioned briefly.

8 THE COURT: Okay, that's fine, thank you.

9 MR. MACLAY: Thank you, Your Honor, Kevin Maclay  
10 for the Multi-State Governmental Entities Group. Cognizant  
11 of Your Honor comments, I will keep this argument brief.

12 Your Honor, despite the fact that local  
13 governments have strong claims that they've expended  
14 significant efforts in pursuing opioid defendants, including  
15 Purdue, despite the fact they have suffered substantial harm  
16 and despite the critical role that local governments play in  
17 abatement efforts, including under the proposed plan here,  
18 objecting states seek to challenge the plan's  
19 classifications of the non-criminal domestic governmental  
20 claims in Class 4.

21 Your Honor, just to make a very important  
22 overarching point, local governments are at the front lines  
23 of the opioid crisis. If you're in your local community and  
24 you call 911, Your Honor, whether it's because of the  
25 criminal emergency related to opioids or a medical emergency

1 related to opioids, the person who comes, Your Honor, is a  
2 local policeman, a local firefighter, a local county  
3 hospital member, et cetera.

4 It is the local governments who brought most of  
5 the claims against the Debtors prepetition as set forth in  
6 the Debtors' docketed filing at 718 earlier on this case and  
7 it is a clear fact, as has been noted by many of the cases  
8 cited to in our brief, that cities and counties and other  
9 local governmental entities have numerous claims including  
10 for increased healthcare costs, increased foster care costs,  
11 increased crime-related costs, info, and tax revenue. And a  
12 number of cases, such as the City of Surprise case, Your  
13 Honor, lay this out.

14 Secondly, Your Honor, it is surprisingly absent  
15 from any of the objections filed by the objecting states any  
16 mention of the Home Rule Doctrine. They mention Dillion's  
17 Rule which has been largely superseded as a point of matter  
18 by the nearly ubiquitous entry into the Home Rule Doctrine  
19 by almost every state and this is laid out quite cogently,  
20 Your Honor, in our brief in the dispatch of the City of New  
21 York versus Beretta Corp, which is the District Court for  
22 the Eastern District of New York.

23 For example, in that case, the court reasoned that  
24 precluding the City of New York from bringing a suit aimed  
25 at redressing the problem of gun-related violence would

1 interfere with its authority to promote the safety and well-  
2 being of its inhabitants. It is quite clear, Your Honor,  
3 that local governments have both the duty and the authority  
4 to pursue defendants of mass tort-related incidents  
5 including opioid defendants. And the record is replete with  
6 examples of that.

7 For example, Your Honor, if you were to look at  
8 Paragraph 20 of the MSGE Group reply is support of plan  
9 confirmation, we list a litany of cases demonstrating that  
10 local governments have standing to bring such claims and in  
11 Paragraph 16 to 19 and 21 to 24, we have another litany of  
12 cases demonstrating the survival of motions to dismiss by  
13 those same governmental entities.

14 It is also clear, Your Honor, that very recently  
15 in Tennessee, nine counties and eighteen cities and towns  
16 reached a tentative 35-million-dollar settlement with Endo  
17 Corporation, another opioid defendant, on July 22nd of 2021.  
18 And in three other state courts, Your Honor, California, New  
19 York, and West Virginia, county and city plaintiffs are  
20 either currently in trial or have recently concluded trial  
21 and are waiting verdicts seeking billions of dollars in  
22 damages.

23 And, of course, as the Debtor's counsel aptly  
24 noted, Your Honor, it is, of course, true that under the  
25 proposed plan, cities and counties are part of the abatement

1 efforts and a very important part of the abatement efforts  
2 set forth in the plan that we seek confirmation of here  
3 today.

4 And, of course, one final point, Your Honor, the  
5 parens patriae argument made by the objecting states is  
6 overstated first of all, because parens patriae powers do  
7 belong to the various states and localities in their various  
8 circumstances as our brief pointed out. And secondly, the  
9 proprietary actions that all local governments can bring  
10 heavy overlap with such parens patriae actions as pointed  
11 out also in the authorities that we cited you to.

12 To make a long story short, Your Honor, there is  
13 no valid basis to argue the states must be classified  
14 separately from local government and the surprising  
15 suggestion in the states objections that local governments  
16 don't have valuable and important rights to pursue against  
17 opioid defendants is just incredibly shortsighted as well as  
18 misleading and just flatly wrong. And so for those reasons,  
19 Your Honor, we support the Debtors in this particular  
20 example of argument as well as overall with the plan. We  
21 restate Your Honor that local governments and states, in  
22 fact, are appropriately classified together in Class 4.  
23 Thank you.

24 THE COURT: Okay. Thanks. I think Mr. Gold is  
25 handling this for the objecting states, but I may be wrong.

1 MR. GOLD: Your Honor, you are correct, Matthew  
2 Gold, Kleinberg, Kaplan, Wolff and Cohen, representing  
3 Washington, Oregon and District of Columbia. Your Honor,  
4 can you hear me?

5 THE COURT: Yes.

6 MR. GOLD: Okay. Thank you. I will proceed. I  
7 will first note that this oral argument is based on  
8 coordination and cooperation with the Attorneys General  
9 Offices of Connecticut, Delaware, Maryland, Rhode Island,  
10 and Vermont and will be provided in a unified fashion as  
11 we've discussed before, Your Honor.

12 THE COURT: Right.

13 MR. GOLD: And, Your Honor, I, too, will be brief  
14 in my comments in this regard. First, I want to  
15 emphatically say that our argument is not meant -- and we  
16 don't believe it is -- in any way to be disrespecting to  
17 local governments and the first responders and anyone in  
18 that group. We have not been arguing that they do not have  
19 claims. We are not arguing that their claims do not, in  
20 certain respects, overlap with claims that are brought by  
21 the states.

22 But we are arguing is that the states, the  
23 totality of the claims brought by the states and the  
24 objecting states in particular, contain many significant  
25 areas that cannot be brought by the municipalities which



1 supports why the states should be classified separately.

2 For example, in Washington, only the state can  
3 seek as a remedy civil penalties with respect to violations.  
4 That is not something that can be brought by municipalities.  
5 Now particularly with respect to classification, I will  
6 first --

7 THE COURT: Have the states asserted a different  
8 priority based on that right?

9 MR. GOLD: No, Your Honor.

10 THE COURT: Okay.

11 MR. GOLD: I will first note that it is the  
12 Debtors' burden to prove that the classifications were  
13 proper. The Debtors have argued that the argued that the  
14 classification error can be fixed by going back to the  
15 voting results and preparing a count of what the results  
16 would have been had the states been in a separate class.

17 And frankly, Your Honor, I find this is amazing.  
18 The Debtors waited until after the votes had been cast to  
19 rearrange them into a better classification.

20 A classification error cannot be fixed through a  
21 hypothetical analysis of how the votes might have been  
22 arranged under a different classification. The Debtors  
23 certainly cite no cases to support this theory that  
24 classification can ex post facto be revised. The disclosure  
25 statement certainly did not disclose to the voters that

1       their claims might be rearranged into separate classes for  
2       purposes of determining how the plan would go.

3               And, Your Honor, as you, yourself, stated, show me  
4       an election where that was done. I'm not aware that that's  
5       how elections are handled in this country that the votes can  
6       be re-scrambled and realigned if they were not properly  
7       counted in the first place.

8               THE COURT: They are counted.

9               MR. GOLD: They are counted.

10              THE COURT: My statement was as to somehow  
11       assuming votes that weren't counted. But let me just cut to  
12       the chase. I just frankly do not understand this argument.  
13       The caselaw could not be clearer that the focus as far as  
14       1122 of the Bankruptcy Code is concerned, which refers to  
15       substantially similar claims, goes to the right of the  
16       claimant against the assets of the estate. So you can,  
17       although you don't have to, classify claims based on breach  
18       of contract in the same class with claims based on tort  
19       because each of them is unsecured and has the same right  
20       against the debtor's assets, general unsecured claims. Is  
21       there any aspect of your argument that is consistent with  
22       that proposition?

23              MR. GOLD: Your Honor, I'm not disputing that the  
24       claims as treated in the plan are all general unsecured  
25       claims.

1 THE COURT: Okay. So I think you lose. So let's  
2 move on to the NOAT allocation.

3 MR. GOLD: I simply --

4 THE COURT: This is just a waste of time, Mr.  
5 Gold, and I don't understand frankly -- it's just -- I've  
6 read your brief. The only question I had is whether you had  
7 some sort of priority claim, which you told me you don't or  
8 your clients don't. There's been no attempt to designate  
9 any vote in the class as to, you know, being for a claim  
10 that is only held by a state, which would be the remedy  
11 under the brief's argument that only the states can assert  
12 certain types of claims as opposed to a classification  
13 argument since concededly there are general unsecured claims  
14 held by the other governmental entities. There's no  
15 contention of any vote manipulation here given -- and this  
16 is where the actual votes, I think, are relevant.

17 So this is just, this argument makes no sense.

18 MR. GOLD: Your Honor, I was simply responding to  
19 the argument that the Debtors' had just made and they made  
20 in their papers.

21 THE COURT: Well, okay.

22 MR. GOLD: I have one other response to the  
23 argument that the Debtors have made in their papers, Your  
24 Honor. I will be brief with respect to this as well.

25 THE COURT: All right.

1 MR. GOLD: It relates to feature that the claims  
2 were all accorded one dollar votes. We submit that the one  
3 dollar claim setup was preposterous on its face. There may  
4 well be cases where that is the right approach, but not in  
5 this case. While the amounts of the claims might not have  
6 been fixed, the one dollar setup lumped together claims that  
7 were known to be different and several orders of magnitude  
8 different in size. The Attorneys General of the states  
9 represent the entire state and are not simply the sum of the  
10 municipalities that are contained therein. And by arranging  
11 the class and one dollar votes for every party in it, the  
12 Debtors were setting up a structure where they knew that  
13 they would be able to prevail in the ultimate voting and in  
14 a way that was inconsistent with what they had to be aware  
15 were the significant differences in the sizes of the claims.  
16 We submit that it is improper in this case. I have nothing  
17 further to add, Your Honor, unless you have questions.

18 THE COURT: No, I don't. Thank you.

19 MR. GOLD: Thank you, Your Honor.

20 THE COURT: I don't know if the Debtors or the  
21 MSGE want to respond on the one dollar point?

22 MR. HUEBNER: Your Honor, I'll hit that one. The  
23 answer is very simple. The NOAT allocation and he actually  
24 answers a bunch of the sort of points that were made, the  
25 NOAT allocation was agreed to among all the states and

1 entities as their Class 4 shared distribution. The one  
2 dollar was agreed to basically by everybody to avoid what  
3 could have been an unthinkable 3018 process. No 3018  
4 motions were ever filed. We've never heard from anybody  
5 ever in this case until this objection was filed. And these  
6 procedures, as Your Honor remembers, were worked out with  
7 the AHC, with the NCSG, and with the UCC and the disclosure  
8 statement and these mechanics were agreed to by no objection  
9 from either today's objectors or I believe anyone else that  
10 was unresolved. To say now that the one dollar thing  
11 justifies some sort of infirmity is totally inappropriate.

12 And one other very brief point, speaking of  
13 inappropriate, to recharacterize Mr. McCarthy's presentation  
14 or brief as the Debtors have conceded they made a mistake  
15 and now they're trying to fix it, is just misrepresenting to  
16 this Court, just ridiculous.

17 THE COURT: I don't need to hear on that point.

18 MR. HUEBNER: Thank you, Your Honor.

19 MR. MACLAY: Your Honor, Kevin Macclay for the MSGE  
20 Group. On the legal aspects of the one dollar claim, I  
21 would direct Your Honor to Page 16 of our confirmation brief  
22 and No. 27, where we go through a number cases that have  
23 held a one dollar -- in a mass tort case, a one dollar  
24 voting amount is appropriate. And I would just like to read  
25 to Your Honor the A.H. Robbins analysis, which was affirmed

1 by the Fourth Circuit: "Any attempt to evaluate each  
2 individual claim for purposes of voting on the debtors plan  
3 of reorganization would, as a practical matter, be an act of  
4 futility and would be so time consuming as to impose on many  
5 deserving claimants further intolerable delay not only to  
6 their detriment but to the detriment of the financial well-  
7 being of the estate as well."

8 And I think, Your Honor, that analysis totally  
9 applies here and clearly justifies the one dollar voting  
10 amount because to liquidate the various and complex  
11 interrelated claims of all of the claimants here would have  
12 been essentially an impossible undertaking and certainly the  
13 gain would not have been worth the gamble, Your Honor, as  
14 noted by A.H. Robin and a litany of other cases cited in our  
15 brief.

16 THE COURT: Okay. Very well. I guess to me,  
17 ultimately the fact that the class that the objecting states  
18 say that they would want to be in, which would be a class of  
19 states only, voted overwhelmingly in favor of the plan,  
20 suggests that they would want to fight it out with these  
21 other 38 states as to the amounts of their claims, which I  
22 don't think is what Mr. Gold was saying, which is that the  
23 local governments have smaller claims. I actually think it  
24 is a nonmaterial amendment to a plan to allow a plan to be  
25 amended to reclassify in a class if one believed that the

1 class needed to be reclassified.

2 So I guess, to me, this seems to be unlike some of  
3 the other arguments that the objecting states have made,  
4 just an attempt to throw sand in the gears without any real  
5 merit to it whatsoever.

6 So why don't we move onto the next topic, which is  
7 the NOAT allocation issue raised as the only basis for West  
8 Virginia's objection to the plan and I think here, counsel  
9 for the Ad Hoc Committee of States and other Governmental  
10 Entities will argue in support of the plan and then we'll  
11 hear from West Virginia's counsel in support of the  
12 objection.

13 MR. WAGNER: Thank you, Your Honor. Can you see  
14 and hear me? It's Jonathan Wagner from Kramer Levin on  
15 behalf of the Ad Hoc Committee of Governmental and Other  
16 Contingent Litigation Claimants.

17 THE COURT: Yes, I can.

18 MR. WAGNER: Before I start, I just want to thank  
19 my Kramer Levin colleagues who have worked on this matter.

20 Your Honor, there are difficult questions that you  
21 need to answer in this hearing, but allocation is not one of  
22 them. And while we take the objection every seriously, it's  
23 not really a close question. The context is very important.  
24 We have 49 states on one side and 1 on the other. And when  
25 does the majority of the states in this country agree on

1 anything?

2 Here, you have 49 states who agree, or at least  
3 didn't object -- I don't want to overstate it -- and only  
4 one has disagreed. In fact, 49 --

5 THE COURT: I actually think it's 47 to 1, but  
6 that's okay.

7 MR. WAGNER: I won't round up to 49, but it's 1 on  
8 the other side and if the plan is so grossly unfair, why is  
9 it that only one state is objecting? These numbers alone  
10 could be used to justify compliance with the code, but even  
11 if you put aside those numbers and address the objections on  
12 its merits, it's clear that this plan satisfies the code.  
13 And as Mr. Huebner noted, no plan is perfect, but this one  
14 is pretty good. It's also fair to West Virginia.

15 As we heard during the testimony, West Virginia  
16 has about half a percent of the nation's population, but is  
17 getting more than twice that under the plan. And the reason  
18 is because the plan takes into account the intensity and  
19 severity measures that have been advocated by West Virginia  
20 itself. It just doesn't take them into account at the same  
21 extent.

22 Now Your Honor has to decide this issue based on a  
23 record that's before you and I don't know what Attorney  
24 General Morrissey is going to raise, but in this case, we  
25 have two witnesses, one was John Guard from the Florida



1 Attorney General's Office who was a very credible witness,  
2 and on the other side, we had Dr. Cowan who was the only  
3 witness offered by West Virginia and his testimony was full  
4 of admissions and contradictions. And his admissions on  
5 fairness and the reasonable nature of the plan and good  
6 faith are prone to objection.

7 Let me bring up the specific objection. The first  
8 is that the plan was not proposed in good faith in violation  
9 of Section 1129(a)(3). Under 1129(a)(3), a plan has to be  
10 proposed with honestly and good intentions. That's the  
11 Chassix case, 533 B.R. 64 at 74. To get in on one side, we  
12 had John Guard's testimony and his declaration. And Dr.  
13 Cowan's testimony to the contrary just does not overcome  
14 that testimony.

15 Mr. Guard was extremely credible and as Your Honor  
16 will recall, there was no significant cross-examination of  
17 him. He testified to years of negotiations and compromises  
18 back and forth. That was at Paragraph 10 to 47 of his  
19 declaration, and the testimony on Day 2, Pages 95, 105-106,  
20 and 118.

21 Now, could it really be that an allocation plan  
22 that was negotiated by all of the country's Attorneys  
23 General was negotiated in bad faith, that there was some  
24 national conspiracy among the top legal officers of the  
25 various states? Just to state that proposition shows how

1 farfetched it is. These are negotiations that had to  
2 balance the interests of fifty different states. And nobody  
3 ganged up on West Virginia.

4 Now the two -- there were two specific complaints  
5 raised by West Virginia under 1129(a)(3). The first is that  
6 the plan is a political compromise. As Your Honor is well  
7 aware, compromise is de rigueur in bankruptcy and is, in  
8 fact, favored. Compromise is not a dirty word.

9 A second specific objection is that the large  
10 states somehow took control of this process. This is not  
11 consistent with the outcome here. The small states,  
12 including West Virginia, do very well under this plan, and,  
13 Your Honor, should ask what proof has been offered here that  
14 the large states seized the process. There's been no fact  
15 witness offered by West Virginia, and on top of this we have  
16 the admission by Dr. Cowan, that the plan, that reasonable  
17 people may differ. That's at page 230 of the fourth day of  
18 the hearing.

19 Another (indiscernible) issue of good faith, Your  
20 Honor, is whether the plan achieves the result that's  
21 consistent with the Bankruptcy Code. That's the Chassix  
22 case at 533 B.R. 74, and as -- my -- the others who have  
23 made presentations before have noted, this is a plan that --  
24 that confers substantial value on many different creditor  
25 groups, and it not only delivers value to creditors, I think

1     it's fair to say it's a plan that's in the national  
2     interests. It's a plan that literally saves lives, and how  
3     often can -- how often can somebody say that about a  
4     bankruptcy plan?

5             On this score that (indiscernible) that the  
6     statements pre-litigation by Dr. Cowan, I think, are very  
7     relevant, "spending more now in an effective way, though,  
8     will reduce damages". That's Exhibit 389 at Page 12, and as  
9     he also admitted, all the plans here are effective, at the  
10    pages 241 to 242 of his testimony. So how could a plan  
11    that's in the national interest somehow be bad faith? That  
12    -- is that an objection raised by West Virginia is that it  
13    is one of equal treatment under 1123(a)(4) of the plan, of  
14    the code.

15            Now here, all the states are subject to the same  
16    criteria, the treatment is identical, and under the W.R.  
17    Grace case, "what matters is not the claimants recover the  
18    same amount, but they have an equal opportunity to recover  
19    on their claims". That's W.R. Grace 729 f.3rd after Page  
20    327. Since all the states are treated equally, you could  
21    argue that the proper standard is Rule 9019, and here the  
22    settlement clearly falls above the lowest point in raise of  
23    -- in range of reasonableness.

24            There's no argument to the contrary and Dr.  
25    Cowan's admissions that the plan -- that the plan is

1 reasonable really ends the matter, and I'd also note his  
2 admission that he prefers the bankruptcy plan to no plan.  
3 That's at Page 242 to 243 of the fourth day of the hearing.  
4 But even if Rule 9019 is not the standard, and you simply  
5 apply 1123(a)(4), the objection still fails. West Virginia  
6 has characterized this objection as -- as follows, "same  
7 treatment does not mean identical treatment, and courts have  
8 approved settlements where the class members received  
9 different percentages of recovery to take into account  
10 different factors. So long as the settlement terms of  
11 fashionably based on legitimate considerations." That's the  
12 West Virginia objection at Paragraph 28, citing cases.

13 The objection that West Virginia raised is -- is  
14 that the plan places too much emphasis on population,  
15 however, we have Dr. Cowan's statement, prelitigation, that  
16 "large communities likely should receive more than small  
17 communities". That's Exhibit 380 -- 388 at Page 6. In any  
18 event, West Virginia overstates the importance of population  
19 under this plan.

20 Just to go into a little bit of math, population  
21 is 31 percent of 80 -- of the first 85 percent and the  
22 balance is intensity measures, and then you have the  
23 remaining 15 percent that's all intensity measures and you  
24 all have the -- you also have the 1 percent intensity fund,  
25 and for all of those reasons, that's why West Virginia,

1 which has about a half a percent of the population, is  
2 getting more -- is getting 1.16 percent of the funds.

3 But, Your Honor, may legitimately ask why  
4 (indiscernible) the population at all? It's not at a  
5 political -- or it's not a political criteria. It's a  
6 rational criteria. It's not like throwing darts against the  
7 wall. Mr. Guard testified that there are issues concerning  
8 the intensity and severity measures, which make them  
9 subjective in some sense, and population is an objective  
10 measure. And I'd refer the Court to Mr. Guard's testimony  
11 at Pages 90 to 91 of the second day of the hearing, where he  
12 noted issues concerning under reporting as to those severity  
13 and intensity measures, inconsistencies among the states in  
14 reporting cause of death; and he said at Page 91,  
15 "population was added to try to deal with the issues that  
16 existed for the other metrics", and -- and he went on to  
17 say, "population was and is a typical metric that is  
18 utilized in State Attorney General settlements", again, Page  
19 91. And we cited in our -- in our response a couple of -- a  
20 couple of among many instances in which national settlements  
21 used population as the only factor. In Recompact Disc, 216  
22 F.R.D. 197 at 200, in re Toys-R-Us antitrust litigation 191  
23 F.R.D. 347 at Page 350, and significantly, Dr. Cowan  
24 admitted that this settlement is a lot more fair than other  
25 national settlements, including the national tobacco

1 settlement. That's at Page 2 -- (indiscernible).

2 Just a minute on California, I don't know whether  
3 Attorney General Morris is going to raise that issue. It's  
4 a minor point, whether they contribute to the intensity  
5 fund. But during cross-examination, it was established that  
6 had the plan used expenditures on criminal justice as a  
7 factor, as Dr. Cowan did in his prelitigation hypotheticals,  
8 then California would have been far better than the 9.9  
9 percent it gets under this plan.

10 The one final point, Dr. Cowan's plan, it's  
11 legally irrelevant under NII Holdings 536 B.R. at 125, but  
12 even if you plan more than (indiscernible) it doesn't really  
13 advance the objection. And when an expert changes his  
14 opinion so dramatically, as I think Dr. Cowan did from  
15 prelitigation to post-litigation, really has no credibility.  
16 And he admitted during his -- during the cross that his  
17 post-litigation plan is not remote -- does not remotely  
18 resemble his pre-litigation plan. And then also, he  
19 admitted before litigation -- he admitted before litigation  
20 that "there is no simple answer to the question how to  
21 allocate one large settlement -- one large opioid  
22 settlement. Too many questions remain. Too many issues  
23 need to be resolved." That's Exhibit 388 at Page 14. He  
24 had admitted that what's fair under these circumstances is  
25 complicated. That's Pages 233 to 234.

1           He said that spending more money won't necessarily  
2     get you better results. That's Exhibit (indiscernible) at  
3     Page (indiscernible). He said, "treatment in terms of  
4     offerings may not translate into increased efficacy", and  
5     just -- "just spending more to achieve equality may not be  
6     the best outcome". That's Exhibit 392 at Page 12. And then  
7     also, his plan produces very odd results. Washington, which  
8     has one fourth the population of Texas gets more than Texas.  
9     Kentucky, one fourth the population of New York, gets more  
10    than New York. Virginia, with a growing population, four  
11    times the population of West Virginia, which is losing  
12    population, gets less than West Virginia. And Your Honor,  
13    the point of that exercise was to understand the point that  
14    if you change this plan to make it more fair to one state,  
15    for example, West Virginia, you have problems elsewhere in  
16    the plan. But I think it underscores how difficult it was  
17    to reach a compromise here, a balance, and I think all of  
18    that allows, Your Honor, discretion to (indiscernible)  
19    allocation under this plan.

20           To sum up, Your Honor, allocation under this plan  
21    is based on rational and legitimate considerations. It's  
22    actually quite an achievement. It confers the benefit on  
23    the States and on the Nation as a whole. And I have to say  
24    no good deed goes unpunished because West Virginia, does  
25    pretty well under this plan, and West Virginia's criticism

1 really fail on their own terms, but certainly in the large  
2 context of this case. And the larger context is as the West  
3 Virginia expert, himself noted, the more time that this  
4 problem festers without additional spending on opioid  
5 abatement, the worse the problem will become. And that's  
6 probably why the West Virginia expert admitted that he  
7 prefers the current plan to no plan. And for all those  
8 reasons, Your Honor, the Court should reject the objection.  
9 Thank you.

10 THE COURT: Okay. Thanks. So again, Counsel for  
11 West Virginia, Mr. Morrissey, I think is going to handle the  
12 argument in support of the objection.

13 MR. MORRISSEY: Your Honor, this is Attorney  
14 General, Patrick Morrissey, and I'm grateful for the  
15 opportunity to appear before you today. I would mention, at  
16 the outset, that the issue of the opioid epidemic is quite  
17 severe in our state, and regardless of all of the issues  
18 that you're hearing about, I think one area that we can find  
19 in common with virtually every party, is everyone would  
20 mention that West Virginia was ground zero at the opioid  
21 epidemic. If you looked at many of the metrics, West  
22 Virginia had the most horrific of experience with the level  
23 of intensity and severity that I think virtually all counsel  
24 would concede.

25 The reason I'm very appreciative to be before you



1       today is because this decision represents the first of  
2       likely many in a series of court cases which will determine  
3       how abatement is going to occur in the country, and I  
4       recognize that many of the states spent many years and they  
5       worked on it. But just because many states agree on a  
6       flawed formula doesn't make it correct. And so we are  
7       asking the Court to look at the grave issues associated with  
8       this particular case in having the predominant population  
9       based model, contrary to Counsel's argument that it's 31  
10      percent population, effectively, a vast majority of this  
11      formula is based upon population. It's not based on  
12      severity. In fact, the one severity measure that everyone  
13      can point to is the 1 percent fund that's been discussed a  
14      lot.

15               If you actually looked very carefully at what the  
16      principle public health agency of the country, whose task  
17      was charged with looking at these issues comes up with,  
18      they've indicated that intensity should represent 15 percent  
19      of the overall formula. The difference between 1 percent  
20      and 15 percent is obviously very stark. Now Counsel --

21               THE COURT: Can I just say that --

22               MR. MORRISEY: -- indicated --

23               THE COURT: -- let me just interrupt you --

24               MR. MORRISEY: Sure.

25               THE COURT: -- Mr. Morrisey, that -- you're --

1     you're referring to the, it's an acronym, it's S A -- S H --  
2     I'm not trying to letter --

3             MR. MORRISEY:   SAMHSA?

4             THE COURT:   SAMSA, but it's SAMHSA?

5             MR. MORRISEY: SAMHSA -- I think it's Substance  
6     Abuse Mental Health Services Administration.

7             THE COURT:   And -- and as I understand it, that  
8     has changed -- that comes out once a year or every other  
9     year and it is changed from time to time?

10            MR. MORRISEY:   It has changed.   I know that the  
11     most recent formula that we've looked at, they have an  
12     intensity fund applying to ten states that then would be  
13     able to claim up to 15 percent of the aggregate dollars that  
14     Congress appropriates.

15            THE COURT:   Okay.

16            MR. MORRISEY:   So if we step back to Counsel's  
17     arguments that this plan was made in good intention, I think  
18     that that statement could be torn apart fairly quickly.  
19     Let's start with something that Counsel indicates is a very  
20     small issue, and you can make an argument about whether 1  
21     percent of the aggregate funds going to a particular state  
22     is small or large, but when you're talking about the largest  
23     state in the country for all the states to come together  
24     behind, what I would call, the California carveout or cash  
25     grab, you're talking about a significant amount of money.

1 Not only with respect to the amount with this Purdue  
2 bankruptcy, but all those in the future. And so, that 1  
3 percent is not indicative of good intentions.

4 How could every state contribute to a particular  
5 intensity fund showing that at least on a minimal basis, all  
6 states believe that intensity's important and one state be  
7 afforded the opportunity, due to political consideration, to  
8 argue well, we shouldn't have that in there.

9 Your Honor, the arguments we bring before you  
10 today, we think are straight forward and don't contain some  
11 of the same controversy that you had on Monday, or you've  
12 had throughout. These issues that we'll bring in with  
13 respect to No. 1, trying to eliminate the California carve  
14 out. That's straight forward. That could be easily  
15 adjusted because there's no rational basis, whatsoever, no  
16 legitimate consideration that one state should ignore  
17 intensity considerations. I would defy Counsel to come up  
18 with one good reason. They cite an 18 percent issue with  
19 respect to judicial enforcement and other matters, but  
20 nothing in the record indicates that that's even tied  
21 directly to opioids.

22 There are many reasons why a state ultimately  
23 might have more resource needs with respect to law  
24 enforcement and other areas. But everyone that's gone  
25 through this process would acknowledge that the California

1 piece is one of the blites on this deal that needs to be  
2 changed, because once again, it's not good faith to allow  
3 one state to not contribute to a fund that every other state  
4 does.

5 The second piece, which I think is equally  
6 powerful, is that most of this formula is once again based  
7 upon population. Counsel cites 31 percent, but if you look  
8 closely at the formula when you're looking at morphine  
9 equivalents, when you're looking at several other factors,  
10 it's clear that we're effectively quadrupling the population  
11 count, and Counsel and our expert witness, Chuck Cowan,  
12 testified to that fact without any contravention.

13 That's something that's not rational when you're  
14 trying to solve a problem. It -- Counsel states that this  
15 is consistent with many other matters that get settled by  
16 the state, but frequently, when states are involved in a  
17 consumer or an antitrust matter, there could be  
18 discouragement and there could be something focused on a  
19 population. This particular issue deals with the disease  
20 state of individuals and what's happening within specific  
21 communities.

22 So to be able to say there should be a population  
23 based formula to solve the problem, rational economic theory  
24 would never suggest that you're going to go in and say how  
25 many people live in a state? That's how we're going to deal

1 with the opioid epidemic? It's an embarrassment and an  
2 affront to any attempt to have good faith when the focus is  
3 so much on population. And of course, there were rigorous  
4 discussions about this for years. I recognize that many of  
5 my colleagues ultimately decided to move in a different  
6 direction, but the importance for this Court, for this  
7 precedent, to get it correct, to do two things; eliminating  
8 that California carve out, and two, asking to go back and to  
9 either: a) change the population based system and move it  
10 more to an intensity system, or b) simply taking an easier  
11 tactic, which would be to move from 1 percent of intensity  
12 fund to 2 percent or 3 percent, which I would note is very  
13 different than what SAMHSA recommends, at 15 percent. That  
14 would create a much different abatement structure, which is  
15 going to allow money to flow to the communities that  
16 actually need it most. And I think that's what we're all  
17 here to do, to make sure that money gets out quickly.  
18 That's why we've tried to work collaboratively with the  
19 states, and we haven't objected to other provisions, but we  
20 see this as a fatal flaw of the agreement.

21 But, Your Honor, you have the ability to help  
22 change that and to convince the parties that a California  
23 cash grab, or carve out, is inappropriate. It should make  
24 America very, very upset, and separately, the intensity fund  
25 is still inadequate, given the fact that when you solve a

1 problem, you look at healthcare capacity. You look at the  
2 structure or what's being done to deliver healthcare within  
3 a particular community. You look at the opioid deaths and  
4 you look at the people that are not treated, currently.  
5 Based upon all of those factors, it's clear that West  
6 Virginia is a unicorn, so it's not surprising that we would  
7 get voted out on a particular issue like this because our  
8 numbers are so bad, compared to every other state.

9 We're asking the Court to help bring that good  
10 faith back to the process by making those two modest  
11 considerations: 1) eliminate that carve out, and 2) increase  
12 the size of the intensity fund so that many years from now,  
13 we're not going to go back and look at this like we all  
14 looked at tobacco, that the moneys were actually not put in  
15 adequately to solve the problem. That is just ended up  
16 being a political grab bag. That's what we should all  
17 oppose.

18 This is a court of law where everyone expects to  
19 get the best treatment under a quality of law. It's not  
20 Congress, it shouldn't be compared to that where they make  
21 political deals all the time. We have a chance to actually  
22 focus on solving the problem, the right way, in a manner  
23 that this allocation formula does not.

24 Your Honor, I'm very grateful for the opportunity  
25 to personally come before you today. This is the number one

1 issue facing our state, and I wanted to amplify how  
2 important it is that we fix this because what this Court  
3 decides to do is likely to serve as a president going  
4 forward for all the other litigation that we have against  
5 manufacturers and pharmacies. And what we've found through  
6 all the years, West Virginia's been out in front, leading on  
7 this issues, is that we have to focus on intensity and  
8 severity. And this allocation formula does not do that, and  
9 the record makes that clear.

10 THE COURT: Okay. Thank you.

11 MR. WAGNER: This issue has to be decided on the  
12 record and there's a -- there's a record before your Honor.  
13 I don't think I need to dwell on it any longer. Second, Mr.  
14 Guard, I think testified eloquently why population is not  
15 some random (indiscernible). It covers some of the  
16 subjective problems with the other factors; and third and  
17 for this, I'm going to have to defer to my bankruptcy  
18 colleagues, but as I understand it, Your Honor, doesn't get  
19 to redline this part of the plan. It's either plan or no  
20 plan, and it's significant that Dr. Cowan, when he was asked  
21 plan or no plan, he said he prefers the plan. Thank you.

22 THE COURT: Well, don't go away yet, Mr. Wagner.  
23 I -- I agree, the record is pretty -- is not pretty, it's  
24 well developed on this issue, with one possible exception,  
25 which is why California, of all states isn't contributing to

1 the 1 percent small state fund. I understand there was  
2 testimony that California has the highest, I believe there  
3 was testimony, I'll have to go back and look at it. Either  
4 has the highest or a significant amount of criminal justice  
5 expense. But and I appreciate your, and Mr. Guard was  
6 (indiscernible) limited in what could be discussed about the  
7 party's negotiations, particularly given the sensitive  
8 nature of individual states negotiations. But I -- I --  
9 again, I'm dealing with a specific statute, which is  
10 1123(a)(4), which says that a plan shall provide the same  
11 treatment for each claim or interest of a particular class,  
12 unless the holder of a particular claim or interest agrees  
13 to less favorable treatment. And I understand that you said  
14 that this proposal, just like the State of West Virginia's  
15 proposal, isn't a straight or simple pro-rata treatment,  
16 it's a formula that has adjustments to it to take into  
17 account various different states or groups of states  
18 interests. But they all seem to have acted as a group,  
19 except on this one point, where only California is carved  
20 out, unless I'm missing something.

21 MR. WAGNER: No it's only -- it's only California.  
22 So a couple of points. First, the class -- first of all the  
23 class has voted for this. Everyone else has gone along with  
24 it --

25 THE COURT: No, but that's --



1 MR. WAGNER: -- second of all --

2 THE COURT: -- that's not -- but that's not --

3 1123(a)(4) applies notwithstanding the class vote, if  
4 there's an objector, like West Virginia, then they can raise  
5 1123(a)(4).

6 MR. WAGNER: Well, look, I -- I can't speak to  
7 California's motivation, but this is not -- it's not a big  
8 issue. It's a contribution to 1 percent, and California  
9 does have an argument, as I noted during the cross of Dr.  
10 Cowan, that had a different set of factors been used --

11 THE COURT: I understand that, but again, the  
12 statute I'm dealing with is provide the same treatment for  
13 each claim. Now here, I get it, it's in the context of a  
14 heavily negotiated settlement among the states, the 48  
15 states that are participating in this plan. The other two  
16 having settled with Purdue, pre-bankruptcy. So I think to  
17 some extent, one looks at the fairness of the overall  
18 settlement as opposed to the same treatment, and that's  
19 corroborated by the fact that the -- Mr. Cowan's proposal is  
20 depends on different factors too, it's not the same, you  
21 know, it's not just a prorata under one measure for -- for  
22 any state.

23 But it -- it is -- unless there's a really good  
24 explanation for it, it is somewhat anomalous that  
25 California, alone, is not contributing to the small state

1 fund. Unless I'm missing something.

2 MR. WAGNER: Well, again --

3 THE COURT: I mean, I think, I mean, maybe I'm  
4 putting words in Mr. Morrissey's mouth, but if it's not that  
5 big a contribution, why doesn't California just agree to it?

6 MR. WAGNER: Again, I can't speak to California's  
7 motivation, but I would say it's in the general context of  
8 the plan. It's not -- it's not material.

9 THE COURT: Well --

10 MR. WAGNER: The contribution --

11 THE COURT: -- but -- I -- (indiscernible) I don't  
12 know. I don't -- I think that argues both ways, frankly.  
13 All right.

14 MR. WAGNER: I -- yeah, I take, Your Honor's  
15 point.

16 MR. MORRISEY: Your Honor --

17 THE COURT: I mean, I -- I -- the reason I've had  
18 -- and I'm sorry to interrupt you, Mr. Morrissey, the reason  
19 I'm asking this is you do have a very good record here, Mr.  
20 Wagner, generally. But all I have, I think on the  
21 California piece, unless I'm missing some piece of it, is  
22 that one can argue that if you took law enforcement as an  
23 allocation factor and Mr. Cowan, did testify that that could  
24 be taken as an allocation factor, California would actually  
25 be getting a lot more. What I don't have is whether that's

1 any different than all the other 47 states or whether  
2 they're just saying my way or the highway. Even though they  
3 really aren't that different than the other 47. But maybe  
4 there's something in the record that suggests that they are  
5 unique, or that of the states contributing to the 1 percent  
6 fund, they have a highly disproportionate amount of law  
7 enforcement activity, particularly related to opioids.

8 MR. WAGNER: Well, again, I think -- again, I  
9 think the (indiscernible) of California could have argued  
10 otherwise, and this was a -- this was (indiscernible) and a  
11 compromise among the states, and they've all gone -- they've  
12 all gone along with it, including others similarly situated  
13 (indiscernible) West Virginia, but I take, Your Honor's  
14 point.

15 THE COURT: Okay. Well, I hate to --

16 MR. MORRISEY: Your Honor --

17 THE COURT: -- I hate to -- if I could just get  
18 this out, Mr. Morrisey. I hate to suggest more issues for  
19 people to negotiate over in the next couple of days, but  
20 this may be one that the states may want to discuss with the  
21 State of California. I -- I under -- I think I do  
22 understand both sides arguments on this point. But I'll  
23 hear Mr. Morrisey on it.

24 MR. MORRISEY: Your Honor, I would address the  
25 materiality issue that in light of the sums of money that

1 are involved, when you're talking about 1 percent of a  
2 state's share, if you look at \$10 billion, hypothetically,  
3 that's \$100 million.

4 THE COURT: No I -- that's --

5 MR. MORRISEY: And so it --

6 THE COURT: -- I agree.

7 MR. MORRISEY: -- from a West Virginia  
8 perspective, when you're talking about a small intensity  
9 fund, we could be talking millions of dollars, and so that's  
10 the first piece. So it is material, and second, once again,  
11 we would point out that the record is very clear, that John  
12 Guard testified that California said this was good enough,  
13 and that they weren't going to give any more, but once again  
14 that doesn't meet a good faith standard, and that's why  
15 we've always asked, at a minimum, not only to increase the  
16 intensity fund but this is a blight on the deal, and it  
17 doesn't meet any rational considerations. It's not based on  
18 a legitimate consideration.

19 THE COURT: Well, I -- I do -- I would put a  
20 qualification on what you just said, sir, which is I don't  
21 think this is a good faith issue. I think it's really a  
22 same treatment issue and I -- I have a hard time seeing one  
23 state, whether it be West Virginia on one side or California  
24 on the other, having a unique treatment that other hadn't  
25 negotiated, you know, for some very good reason, and I'm not

1       sure I see one here. But I'll have to -- I'll have to  
2       consider this carefully.

3               MR. WAGNER: And just one more point about the  
4       math, if the intensity fund is 1 percent, 1 percent of 40 --  
5       \$4.5 billion, if my lawyer math is right, is \$45 -- \$45  
6       million, the West Virginia --

7               THE COURT: I -- but look, it's the, you know,  
8       it's the (indiscernible) Webster's line it's a small school,  
9       but there are those that love it, you know, money's money  
10      here. It's important.

11              MR. WAGNER: The West Virginia share of that is  
12      \$450,000.

13              THE COURT: Well, that -- that can help -- that  
14      can help someone in West Virginia.

15              MR. HUEBNER: But Your Honor, one very small point  
16      from the Debtors, if the states are able to work this out  
17      amongst themselves in connection with the Court's, I think,  
18      pretty strong direction, we think that'll be fabulous. If  
19      the Court, nonetheless, felt in the absence of such an  
20      agreement, that the Court was essentially going to direct  
21      it, this is not the debtor's fight, but we would certainly  
22      not have no objection to that as the plan proponent it is  
23      our plan that would be changed. I think that the Debtor's  
24      view has at least some small relevance and we would not  
25      object.

1 THE COURT: Okay. Thank you.

2 MR. ECKSTEIN: Your Honor, I would just make one  
3 point. This is Kenneth Eckstein. I do want to point out --  
4 and I hear Your Honor's suggestion, and I think we would  
5 obviously love to have that consensus achieved. I do want  
6 to point out that California remains an (indiscernible)  
7 state and I don't --

8 THE COURT: I understand.

9 MR. ECKSTEIN: -- hold out the likelihood that  
10 we're going to be able to resolve this specific issue with a  
11 state still objecting to the plan. So from a resolution  
12 standpoint, I don't want to give the wrong impression, Your  
13 Honor, about what's (indiscernible).

14 THE COURT: That's fair. I just -- I want -- I  
15 think -- and I don't know whether specific counsel from  
16 California is listening, although they've joined in.  
17 California's joined in the Oregon and Washington objection  
18 and others. It's -- look, I'm just pointing out my concern  
19 about this issue. That's all.

20 MR. ECKSTEIN: And we do understand, Your Honor.  
21 And obviously, the states worked as hard as they possibly  
22 could to bring the broadest possible consensus.

23 THE COURT: Well, that's clear.

24 MR. ECKSTEIN: There is this --

25 THE COURT: I -- look, that is clear to me. That

1 is clear to me, but nevertheless, I have to apply  
2 1123(a)(4).

3 MR. ECKSTEIN: I believe, Your Honor, that you  
4 can, and I believe that there is equal treatment. But  
5 you're correct that that equal treatment includes an  
6 exception, in a sense, for one state that would've argued  
7 for more. They believe they were entitled to more --

8 THE COURT: I agree.

9 MR. ECKSTEIN: -- than they're getting, and this  
10 is where the settlement came to rest. Can it be improved?  
11 Like all settlements, yes, but I just --

12 THE COURT: Well, that's --

13 MR. ECKSTEIN: -- want to suggest, Your Honor,  
14 that this one may be difficult for us to change. And I  
15 don't --

16 THE COURT: That's fair --

17 MR. ECKSTEIN: -- want Your Honor frustrated by  
18 the inability to make that movement right now.

19 THE COURT: Okay. Very well.

20 MR. ECKSTEIN: Thank you.

21 THE COURT: All right. Thank you both counsel on  
22 that issue. So I think we are next, on the topic list, for  
23 the objection by the Canadian municipalities and First  
24 People's listed in Mr. Underwood's objection. And again,  
25 this is to cover points other than the third-party release

1 point, except for one sort of overarching jurisdictional  
2 point that Mr. Underwood wanted to discuss I think, which is  
3 sovereign immunity or foreign sovereign immunity. So the  
4 Debtors have reserved a very brief time for their remarks,  
5 and then I'll hear from Mr. Underwood. And then they have  
6 some time for rebuttal.

7 MR. TOBAK: Thank you, Your Honor.

8 MR. UNDERWOOD: Your Honor, Allen --

9 MR. TOBAK: Oh.

10 MR. UNDERWOOD: Go ahead.

11 MR. TOBAK: Anyway, this is Mark TOBAK, Davis Polk  
12 for the Debtors. The Debtors' response to the Canadian  
13 objector's objection is set forth in full in our brief, and  
14 there's no need to repeat it here. It appears that over the  
15 course of the hearing, Mr. Underwood's argument may have  
16 evolved since the filing of our reply brief. So the Debtors  
17 do reserve their time for rebuttal.

18 THE COURT: Okay. So --

19 MR. UNDERWOOD: Thank you.

20 THE COURT: -- Mr. Underwood, you can go ahead.

21 MR. UNDERWOOD: Thank you, Your Honor. Allen  
22 Underwood on behalf of -- Allen Underwood with the firm of  
23 Lite Depalma Greenberg and Afanador on behalf of certain  
24 Canadian municipal creditors and Canadian First Nations  
25 creditors. I think the way that we have always viewed this



1 proposed plan (indiscernible) and it's a (indiscernible)  
2 short period of time that it may be leading this Court to  
3 error. In particular, irregardless of any of the other  
4 arguments made by other creditors, that may be leading this  
5 Court to errors particularly with regard to the Canadian  
6 Municipalities and First Nations.

7 Technically, the Sacklers (indiscernible) vast  
8 wealth beyond the jurisdiction of this U.S. court, and that  
9 wealth was largely derived from the U.S. enterprise that is  
10 actually before this Court. In so doing, and unfortunately  
11 at least as this plan is drafted, the Sacklers have made  
12 themselves in their trust something along the effect of --  
13 and it's not (indiscernible) themselves. And in effect, in  
14 the manner in which they're contributing assets to the plan,  
15 they are not -- they're not bowing to this Court. Rather,  
16 they're seeking to direct it.

17 THE COURT: Mr. Underwood, this is --

18 MR. UNDERWOOD: In essence --

19 THE COURT: -- really far afield from, not only  
20 your objection, but also from what I just said, which is  
21 that you had your chance to argue about third-party release  
22 already. I -- it's also, I think, just not -- I'm not quite  
23 sure where you're going on this. They actually are  
24 submitting to the Court's jurisdiction to perform the  
25 settlement, including the injunctive provisions of the

1 settlement. So --

2 MR. UNDERWOOD: I --

3 THE COURT: And as far as the -- your clients,  
4 whether the Court would have jurisdiction over your clients,  
5 they've all filed claims in this case. They're looking to  
6 recover --

7 MR. UNDERWOOD: That correct.

8 THE COURT: -- money in this case.

9 MR. UNDERWOOD: That's correct, Your Honor. And  
10 where I was going from the outset was this notion,  
11 effectively, that the Sacklers cast a dark pale over this  
12 entire settlement by suggesting that -- there's a pinhole  
13 that they suggest that they would walk away from this plan  
14 in the event that these releases are not approved. And I  
15 don't know whether that's true or not.

16 But what they've done is to -- effectively, this  
17 Court is administering non-Debtor assets in Canada by way of  
18 the IACs and the rights of the Canadian Claimants in Canada  
19 to bring claims against the Sacklers. And I think that  
20 jurisdictionally in the first instance here, that's a bit of  
21 a problem.

22 Now I'll go to Section 106, and I guess the  
23 related issue, which is the way that this plan was  
24 structured, if you were an international creditor, you were  
25 given the devil's choice of filing a claim and affirmatively

1 participating in this process or not filing a claim and  
2 seeing how it played out. And I guess reserving your rights  
3 to pursue assets elsewhere.

4 The problem is that this Court -- because of the  
5 fact that the overall resolution here is actually  
6 administering non-Debtor assets in such a vast manner, that  
7 it's a bit unfair, generally, I think, to hold the Canadian  
8 Creditors to the kind of global Section 106 waiver that the  
9 Debtors would suggest. And the Debtors cite no case law  
10 about the scope of 106. And I think in principle, my  
11 understanding of what Section 106 is, is it's a defensive  
12 provision effectively to make sure that there are counter-  
13 claims under the Bankruptcy Code that can be brought so that  
14 if a sovereign submits to this Court an affirmative claim,  
15 there can be counterclaims.

16 Now, in this case, there's been no allegation of  
17 any form of Debtor claim, counterclaim, avoidance action  
18 claim against Canada. All Canada's set to do by  
19 participating is preserving its rights. And in fact,  
20 obviously the Canadian Municipal Creditors are glad they  
21 participated because, frankly, assets in Canada are being  
22 directed under the plan confirmed here to U.S. trusts, and  
23 those are U.S. trusts, which the Canadian Municipal  
24 Creditors and First Nations are not -- they're not  
25 beneficiaries.

1           And this is really because of the manner in which  
2     the Debtor has structured this plan. And when I say that, I  
3     -- we would have no argument here today had the Debtor  
4     effectively put the Canadian Municipal and First Nation  
5     Creditors in Classes 4 and 5 under the plan. And in fact,  
6     actually, factually, that's exactly what my clients thought  
7     up until -- and the Debtor admits this -- up until virtually  
8     a week before the plan objection on the sixth amended plan  
9     was due, at which point the Canadians were advised, well,  
10    despite the fact that you received ballots in Classes 4 and  
11    5, you're actually going to be treated in Class 11C.

12           And it was at that point that the Canadian  
13    Municipalities and First Nations realized that merely filing  
14    a claim in this case was not going to be enough to preserve  
15    their rights before this Court, and that they would have to  
16    take the actions they have taken since that point. But bear  
17    in mind, Your Honor, that was a point 30 days ago. I think  
18    there was a presumption on the part of the Canadians that by  
19    filing a claim, their claim would get -- again, in same  
20    manner and fashion, and fairly with respect to other  
21    similarly situated claims.

22           Now, the Debtor clearly will make a distinction  
23    between the Canadian Municipal claims and Canadian First  
24    Nation claim, and the municipality claims, the State claims,  
25    the City claims that are filed by the United States

1 entities. And they make that distinction by a nebulous  
2 reference to how different those claims are. They've never  
3 actually factually driven down why is a Canadian state  
4 different -- or excuse me, a Canadian municipality different  
5 from a U.S. municipality.

6 I would assert that the main difference is that  
7 there was a coalition of U.S. states and later  
8 municipalities that understood that they were -- and did  
9 press in their own direction to establish the classes under  
10 the plan, and that that was something that the Canadians  
11 presumed that ultimately they would be brought into. And  
12 they waited patiently, and ultimately, that never happened.

13 THE COURT: Well --

14 MR. UNDERWOOD: And that, again, is why we're  
15 here.

16 THE COURT: -- the objection itself acknowledges  
17 that the plan says what it says, which is that --

18 MR. UNDERWOOD: Right.

19 THE COURT: -- they're in the -- that the class  
20 that would receive the governmental entities and the class  
21 that would receive Native American tribes that would receive  
22 distributions for abatement purposes through the trust would  
23 be U.S. governmental entities and tribes governed by U.S.  
24 law. I mean, that's -- that is clear in the plan, and it's  
25 acknowledged. So I think the issue here, the legal issue,

1 is not that your clients have a right to be in that -- in  
2 one of those two classes depending on whether they're a  
3 First Nations Creditor or a Canadian Municipal Creditor, but  
4 whether their treatment in the Class 11 is somehow improper.  
5 Now, Class 11 --

6 MR. UNDERWOOD: And --

7 THE COURT: -- Class 11 voted for the plan, right?

8 MR. UNDERWOOD: It --

9 THE COURT: In favor of the plan.

10 MR. UNDERWOOD: Interestingly enough, Your Honor,  
11 I think if you look at the voting tabulation for Class 11C,  
12 and we did examine (indiscernible) tabulation, the  
13 tabulation -- had the Canadian Creditors been able to  
14 (indiscernible) dollar claim, the tabulation would have been  
15 -- I think in terms of numerosity, the majority of creditors  
16 in 11C, no matter how you slice it, would have voted in  
17 favor of 11C.

18 But in terms of overall value, but for the dollar  
19 value restriction, if you attribute any reasonable value to  
20 the Canadian First Nations claims in terms of dollar value,  
21 that class would've voted against the plan. And I don't --

22 THE COURT: But those claims are unliquidated.  
23 And the Debtors, I think, are correct. Having received the  
24 proofs of claim myself, it's very hard to see from the  
25 claims whether they're against the Debtors or against Perdue

1 Canada or one of the Canadian entities. So there's been no  
2 motion to estimate. I don't know why you don't count the  
3 dollar amount.

4 MR. UNDERWOOD: And I don't want to waste a lot of  
5 the Court's time on that subject. I think what we really  
6 come down to is the Debtor hasn't presented anything to  
7 suggest these Canadian municipalities and First Nations are  
8 any different than tribes or cities in the U.S. Now what  
9 does that mean --

10 THE COURT: But I would push back on that too.  
11 They do say that there's a substantial issue, which again, I  
12 could not get to the bottom of in looking at the proofs of  
13 claim and the complaints attached to, as to whether these  
14 claims are against Perdue Canada or against the Debtors.  
15 And it's only to the extent they're against the Debtors that  
16 they would even have a right to recover.

17 And of course, if they're against Perdue Canada,  
18 they're not covered by the injunction under the plan. And  
19 on top of that, and we just spent about 40 minutes on this  
20 issue, it's quite clear to me that as far as the allocation  
21 under the plan is concerned on the public side, the  
22 governmental entities side, it's pretty much a minor  
23 miracle, but it did happen that those public entities were  
24 able to agree on an allocation.

25 But I have no basis to think that that agreement

1 would then include folding in foreign creditors who did not  
2 participate, and I don't think sought to participate, in the  
3 mediation on that issue. And --

4 MR. UNDERWOOD: I think --

5 THE COURT: And so, you know, I think courts have  
6 been recognized that there is a basis for separate  
7 classification. In fact, making a distinction even between  
8 foreign claimants and U.S. claimants as long as there's a  
9 rational basis for it, and including in the Sixth Circuit in  
10 the Dow Corning case, Class 5 Nevada Claims v. Dow Corning  
11 Corp., 288 F.3d 648, 642 (6th Cir. 2012).

12 Now, that was a case where there was evidence as  
13 to the different types of recovery in different countries.  
14 So -- but the principle is you don't have to -- you can  
15 discriminate between domestic and foreign creditors if  
16 there's a rational basis for it. And it seems to me there's  
17 a rational basis.

18 I -- what is not clear to me is whether these  
19 three -- I'm sorry, I think it's -- not three, I think it's  
20 six creditors, would have any right to get involved in the  
21 allocation abatement aspect of this, and frankly, how much,  
22 if they even did, would go to them as opposed to their share  
23 of the \$15 million in cash, which is coming out right away,  
24 which they could certainly apply to abatement if they  
25 liquidate their claims and they're against the U.S.



1 MR. UNDERWOOD: I think the difficulty that I'm  
2 seeing here, Your Honor, is that I haven't seen anybody  
3 distinguish what makes the international border here. What  
4 makes Windsor, Canada different from Detroit? What makes a  
5 Canadian Mohican different from a New York State Mohican?

6 THE COURT: I --

7 MR. UNDERWOOD: And that I understand, Your Honor.

8 THE COURT: Well --

9 MR. UNDERWOOD: I understand.

10 THE COURT: -- but I'll answer that -- I'll try to  
11 answer that question from my own perspective, and you could  
12 try to persuade me otherwise. I think the answer is we had  
13 a many-months-long process in the mediation with Messrs.  
14 Fineburg and Philips, as well as a mediation among the  
15 states themselves, regarding the public side allocation,  
16 which was incredibly difficult. And frankly, I don't see  
17 how do we open that. I just -- you know, there was --  
18 people -- look, I -- people did ask to be involved in the  
19 mediation. The NAACP asked to be involved in it. I said  
20 okay, but I think not having participated in that, and I  
21 can't predict how that would've turned out if the -- if your  
22 clients had sought and been granted the right to participate  
23 in it, whether the U.S. entities would've said, no, it's  
24 just too complicated.

25 But leave that aside. They didn't participate in

1     it. And at this point, we would be rewriting rules that  
2     just, you know, I think the Debtor has the perfect right  
3     under the Bankruptcy Code to have separate classification  
4     and given the acceptance of the plan, separate treatment by  
5     these two -- well, it was -- really would be four because  
6     you have the Native American tribes and the First Nation  
7     tribes, four different classes.

8             So, you know, it's not as if the class in which  
9     the -- your clients are classified are getting nothing.  
10    They're getting money upfront. There's no argument that  
11    they would be getting more in the -- if they had  
12    participated in the no-added Native American tribes class.  
13    And indeed given the acceptance by Class 11, I don't think  
14    that argument flies because that's a cram-down argument.  
15    That's an 1129(b) disparate treatment or unfair treatment  
16    argument.

17            So I just -- I don't -- to me, this objection sort  
18    of tries to fit within applicable sections of the Bankruptcy  
19    Code, but it just doesn't -- it doesn't -- to me it doesn't.  
20    It doesn't fit in.

21            MR. UNDERWOOD: Your Honor, I appreciate your  
22    explanation, and I'm going to try to convince you otherwise  
23    --

24            THE COURT: Okay.

25            MR. UNDERWOOD: -- in the few minutes allowed.

1 THE COURT: And I'm going to (indiscernible) --

2 MR. UNDERWOOD: (indiscernible)

3 THE COURT: -- to make a good -- you can hear if  
4 they have that chance.

5 MR. UNDERWOOD: I greatly appreciate it. And I  
6 will -- I am reserving to subsequently here address the  
7 jurisdictional question. But as to this issue, the counsel  
8 for these Creditors did reach out to the Debtors. The  
9 Debtors, in my opinion, were the first parties that had the  
10 last clear chance to address these claims in what I think is  
11 a more equitable fashion.

12 Mr. Dubel testified that the Special Committee  
13 never reached out to these Creditors. These Creditors filed  
14 their proofs of claim. Ultimately, Your Honor, what I would  
15 go back to here is reference to the In re Dana Corp. case in  
16 the Southern District, and Public Airways and this notion  
17 that all claimants that are in a class must have the same  
18 opportunity for recovery. I understand the notion that that  
19 you're driving --

20 THE COURT: They're not in the same class.  
21 They're in a different class.

22 MR. UNDERWOOD: All right. I'm not going to beat  
23 a dead horse there.

24 THE COURT: Okay.

25 MR. UNDERWOOD: I think the placement of them into

1 a different class was a problem, and that's why I actually  
2 started this argument at a different -- perhaps a higher  
3 level, which is ultimately what happens here is material to  
4 the global perception of U.S. courts and their manner in  
5 which they deal with creditors.

6 And I think that the perception of the Debtors not  
7 having addressed foreign municipalities in the same way that  
8 they addressed U.S. municipalities when -- and let's face  
9 it. If they were all vendors, the fact that they were  
10 across the state border would not have impacted -- all other  
11 things being equal would not have impacted their  
12 classifications, and they would have this (indiscernible).

13 THE COURT: I agree with that.

14 MR. UNDERWOOD: All right.

15 THE COURT: I agree with that. On the other hand  
16 --

17 MR. UNDERWOOD: So --

18 THE COURT: On the other hand, if they were  
19 personal injury claimants, a la the Dow Corning case, the  
20 Court -- the plan proponent wouldn't be within its rights to  
21 have a separate classification if there was a rational basis  
22 for it based on the different nature of their recovery. And  
23 again, there is a -- there was a very lengthy, expensive,  
24 and well-publicized process here to mediate the allocation  
25 and treatment of public creditors that those who wish to

1 participate in, really pretty much just had to file  
2 something if they were let in the door in a timely fashion,  
3 and they would've participated, including the NAACP for  
4 example and the school districts.

5 So I think -- look, clearly it is up to the  
6 Canadian court in it's -- in response to a motion for final  
7 recognition to decide this issue. But I think the record  
8 should be clear that there was no exclusion of the Canadian  
9 Municipal Creditors and First Nations Creditors from that  
10 process, and the process was a lynchpin of this plan. To  
11 now reopen it would be, I think, impossible to bring other  
12 parties into it.

13 On the other hand, the class in which the Canadian  
14 Creditors were classified, voted to accept the plan, and I  
15 don't -- I have no evidence that they're -- even setting  
16 aside that they -- because of that vote this is irrelevant  
17 to me legally, under the Bankruptcy Code it might be  
18 relevant to a Canadian court of recognition. I don't know,  
19 but there's no evidence that they're getting a worse deal  
20 than if they had been included in the trust structure.  
21 They're getting their pro rata share of \$15 million in cash  
22 right away that wouldn't happen but for, I believe, the  
23 other aspects of the plan.

24 MR. UNDERWOOD: I think, Your Honor, I just want  
25 to make clear that at least the Canadian Creditors view this

1 as a conscious choice by the Debtors in the manner which  
2 they classified these Creditors. And ultimately, it's  
3 impossible to say how the mediation might have ended. It  
4 never even started, and that again there was a conscious  
5 choice by someone other than this Creditor.

6 So, ultimately -- I don't want to necessarily  
7 belabor this point any further, but it does raise the  
8 ultimate implication, which is an issue for this Court and  
9 for the United States, which is it would not be a good thing  
10 generally for the Canadian (indiscernible) to accept this  
11 Court's confirmation of a plan. And specifically with  
12 regard to this case, there is no question that that outcome  
13 would affect the implementation, I think, of the plan. So  
14 it is material, I think, in a larger perspective. I'm  
15 willing to move onto jurisdiction.

16 THE COURT: Okay.

17 MR. UNDERWOOD: And essentially, with regard to  
18 that -- and even there, it's still a release issue, I  
19 suppose. Because what we're really talking -- what I'm  
20 talking about is under (indiscernible) Petroleum Network,  
21 and I'm sure you're more familiar with the case than I am,  
22 what these (indiscernible) are affecting is an involuntary  
23 release of a foreign sovereign's, effectively, claims  
24 against the U.S. Debtor.

25 Now, in terms of those claims, the proof of claims

1 attached complaints that assert fraud, public, nuisance, a  
2 variety of forms of relief. And those are the very same  
3 forms of relief that are sought by United States  
4 municipalities.

5 In terms of the jurisdiction of this Court to  
6 enter a nonconsensual release under Section 1141 of the  
7 Bankruptcy Code, I think there is fundamentally -- and this  
8 is absolutely without offense to the Court, but I think that  
9 there is a jurisdictional question at the outset of whether  
10 a non-Article 3 judge actually has that authority.

11 I'll pull very quickly back to the second aspect  
12 of this issue, which is, all right, we all agree about what  
13 Section 106 specifically says, but what was it really  
14 intended to do and what does it really mean in this case?  
15 And are there other statutes that abrogate 106 for the very  
16 specific purposes of this case? And I think in terms of  
17 106, the Debtors, who really don't cite any case law or  
18 analysis of 106, I think -- I think the way that I look at  
19 106 and the way other courts have looked at Section 106 is  
20 that it is to preserve defensive rights.

21 Meaning preserve avoidance actions, preserve, you  
22 know, separate Debtor actions against foreign sovereigns so  
23 that they can't sneak in and sneak out of the court without  
24 having full relief on both sides. But I think here, as I  
25 stated earlier, there is no -- there are no such claims that

1 have been asserted. So ultimately, with regard to 106, the  
2 -- ultimately, the way that the foreign sovereignty immunity  
3 statute actually trumps Section 106 in the Code. To be  
4 frank, I couldn't find any law on that either way.

5 And maybe Davis Polk can correct me on that, but  
6 ultimately there is no exception under the Foreign Sovereign  
7 Immunities Act that would otherwise apply here. So other  
8 than filing a claim, which unquestionably my clients had to  
9 do, wanted to do, they wanted to participate in this case,  
10 it was important that they did it because, frankly, Canadian  
11 assets are affected by the proceedings before this Court,  
12 and there's no denying that.

13 I think ultimately there's a real question here  
14 about whether the Foreign Sovereign Immunities Act, under  
15 this very specific factual circumstance, may trump the plain  
16 language of Section 106. Because what we're talking about  
17 here is really the relationship between two countries, and  
18 I'm certain that the people of Canada will not be happy when  
19 they come to understand that there is an entire abatement  
20 procedure that they were effectively left out of. Maybe  
21 that is what it is, but that's fundamentally, I think the  
22 Foreign Sovereign Immunities Act jurisdictional Section 106  
23 issue before this Court. And I hope I was able to frame  
24 that in some fashion.

25 THE COURT: Well --



1 MR. UNDERWOOD: And we'll certainly raise it on an  
2 objection.

3 THE COURT: I understand your objection, and I  
4 think it really comes down to the Court's, the Circuit  
5 Court's, analysis of, first, what is being done when a plan  
6 does enjoin the prosecution of a third-party claim; and  
7 secondly, whether, by its plain terms, 106(a)(1) and (b)  
8 permit that with regard to an entity, a governmental entity  
9 that has sovereign immunity.

10 But I will note, though, that the injunction is,  
11 as argued by the Debtors and their allies, the committee and  
12 the other ad hoc groups that are supporting the plan, serve  
13 an integral role enabling any recovery under the plan,  
14 including the recovery in Class 11, which is what your  
15 clients would have.

16 And again, as far as participating in an abatement  
17 program, the -- I have no -- nothing to suggest that the pro  
18 rata share of the Class 11 consideration that would flow to  
19 the Canadian Creditors that you represent would be anything  
20 less than the value of the abatement program that would flow  
21 to them, which is, you know, obviously something that, I  
22 mean, directly flow to them. To the extent they're right  
23 across the border from a state or municipality that has that  
24 type of program, there would be some indirect effect, as was  
25 testified. But notwithstanding the size of the value that's

1 going into the NOAT and Native American tribes' trusts, when  
2 you look at the denominator, if you added your client's  
3 claims to it, it's quite possible to me that, even if they  
4 had asked to participate in the mediation, and had been  
5 included in the procedures, these creditors wouldn't have  
6 any aliquot share of that abatement program that would come  
7 close to their pro rata share of the cash that they're  
8 getting right away that they can themselves apply to  
9 abatement.

10 MR. UNDERWOOD: I think, Your Honor -- and it's a  
11 funny thing because I have always said I would never, ever  
12 listen to a client who says -- that says to me that it's  
13 just about money. This isn't just about money, and I think  
14 we cannot say because there never was an allocation to  
15 Canada as to what it might have received as to these claims.  
16 But that be -- I would also say that, and sincerely, very  
17 sincerely, the municipalities and First Nation's interests  
18 in the Class 4 and 5 programs wasn't just money. They were  
19 genuinely interested in the other aspects of the abatement  
20 programs that they are also not partaking in.

21 THE COURT: Well, they have every opportunity to  
22 use those programs as a model for their own use of the money  
23 that they're getting, and frankly to -- if they -- if there  
24 are other municipalities that would oppose that, try to  
25 convince the court in Canada that the condition of

1 recognition is that the recoveries by Canadian creditors be  
2 used towards abatement.

3 MR. UNDERWOOD: I -- I'm sure that someone will  
4 make those arguments in Canada before the NCAA. I guess my  
5 concern also is that the result of this confirmed plan will  
6 be, to a degree potentially, a handcuffing of the Canadian  
7 Creditors to recover presuming that they are locked out of  
8 any recovery against the U.S. assets. They're not a part of  
9 the NOAD or the tribal trust.

10 And presuming that the liquidation value or net  
11 sale value of the Canadian entity is then conveyed to those  
12 very trusts, which the Canadians are not participating, and  
13 presuming that as (indiscernible) --

14 THE COURT: That's a mistake. Your clients, to  
15 the extent they have claims against the Canadian entities,  
16 can go against the Canadian entities. There's -- they're  
17 not being enjoined from doing that. To the extent they have  
18 claims against the Canadian entities, they are not being  
19 enjoined from proceeding against them. There might be a  
20 race to the courthouse on that point, but they have those  
21 claims.

22 MR. UNDERWOOD: I understand.

23 THE COURT: There's no doubt about that. So I  
24 just --

25 MR. UNDERWOOD: I understand the fundamental

1       difficult position, and I'm greatly appreciative of the work  
2       that everyone in this case has done to achieve any kind of  
3       result in an otherwise insoluble case. But I think  
4       ultimately when we look at the liquidation value of those  
5       Canadian assets, they pale in comparison to the U.S. assets.

6               THE COURT: But --

7               MR. UNDERWOOD: Or their treatment of the note. I  
8       think ultimately if we believe that the Canadian Creditors  
9       will be handcuffed in their ability to collect against the  
10      Sacklers under Canadian actions, we've left Canada with very  
11      little from this proceeding, and that is what it is. And I  
12      told clients that on the first day that I took this case. I  
13      think ultimately I appreciate Your Honor's work in this  
14      case.

15              THE COURT: Okay.

16              MR. UNDERWOOD: Thank you.

17              THE COURT: Thank you. All right. Any rebuttal?

18              MR. TOBAK: Briefly, Your Honor. The first point  
19      I'll note -- and this is Mark TOBAK, Davis Polk for the  
20      Debtors, is that oddity that we had earlier in argument that  
21      it was illegal for the Debtors to classify states in the  
22      United States together with the municipalities of counties  
23      within that state. And now we have an argument that it is  
24      apparently illegal for the Debtors to classify cities in an  
25      entirely different country separately from the states and

1 municipalities in this country. And I think that gets to  
2 the point of, you know, it was asked many times why the  
3 Canadian municipalities and First Nations are being  
4 (indiscernible).

5 THE COURT: You cut out. I'm not sure what  
6 happened there. Are you there?

7 WOMAN: (indiscernible)

8 MR. TOBAK: All right. Your Honor, can you hear?

9 THE COURT: Yeah, now I can hear you.

10 MR. TOBAK: Thank you. I don't know where it cut  
11 out, but I'll say that the suit (indiscernible) --

12 THE COURT: You got -- you cut out again. Yeah, I  
13 think when you move your paper you might mute yourself.

14 MR. TOBAK: Oh. There's a (indiscernible)  
15 keyboard underneath my lectern.

16 THE COURT: There you go.

17 MR. TOBAK: Your Honor, I apologize for that.

18 THE COURT: That's fine.

19 MR. TOBAK: In any event, the point is that Canada  
20 is a separate country, and that's fundamentally important  
21 for many reasons. The most important reason, as Your  
22 Honor's already noted, is that there is an independent  
23 company, an IAC, in Canada called Purdue Canada, and that  
24 entity sells and markets pharmaceuticals in Canada. The  
25 importance of the border, which Mr. Underwood asked about,

1 is particularly important in the context of highly regulated  
2 pharmaceutical products which are subject to a great deal of  
3 regulation in the United States, an entirely separate regime  
4 of regulation in Canada under that country's laws. That is  
5 why Perdue Pharma does business in the United States and not  
6 in Canada.

7 To the point of the Canadian municipalities'  
8 desire to participate in an allocation and abatement scheme,  
9 fundamentally we hope, as Your Honor has already noted, that  
10 perhaps this plan of confirm can be used as a model for a  
11 similar scheme in Canada with respect to Canadian  
12 municipalities and assets of the Canadian company.

13 I will note, however, that in this plan here, the  
14 testimony is that it has taken literally years, including  
15 years before Perdue filed for bankruptcy, to develop this  
16 plan and to develop an abatement model that was targeted to  
17 the communities in this country. It would be entirely  
18 inappropriate to attempt to in-graph that model into  
19 different communities in the different country under  
20 different legal regimes with different allocations of  
21 national, provincial, and local responsibilities, and to  
22 address different conduct by different companies and solve  
23 the different needs.

24 With respect to the jurisdictional point, I think  
25 it can't really be said better than 106(a), which

1 specifically provides that it abrogates the sovereign  
2 immunity of any governmental entity, including a foreign  
3 state with respect to Section 105 of the Bankruptcy Code. I  
4 can't find in the Code any suggestion that it is limited  
5 only to the assertion of a counter claim by a Debtor.

6 As Your Honor also noted, the jurisdictional basis  
7 for this proceeding is a simple, Section 1334, and this is  
8 on the basis of any other aspect of a plan being confirmed.  
9 With respect to whether there's any case holding that  
10 sovereign immunity is abrogated by Section 106, one case is  
11 the In re RMS Titanic case, which is at 569 B.R. 825 from  
12 the Middle District of Florida 2017 which states that  
13 pursuant to Section 106(a), foreign states can no longer  
14 assert sovereign immunity from liability under the  
15 Bankruptcy Code.

16 And then it notes that Section 106 abrogates  
17 sovereign immunity as to a governmental unit. It cites to  
18 several cases. One from the Ninth Circuit and others from  
19 other bankruptcy courts across the country. I think that's  
20 really all there is to say with respect to sovereign  
21 immunity other than, also, the fundamental point that the  
22 municipalities and First Nations did come to this court and  
23 seek to participate in this proceeding, which is also a  
24 waiver of whatever immunity they might have had otherwise.

25 Unless Your Honor has any further questions, I

1 think we rest on that and our papers.

2 THE COURT: No, I think that's fine. Thank you  
3 both.

4 MR. UNDERWOOD: Your Honor, may I make one comment  
5 as to the reference to the RMS Titanic case?

6 THE COURT: Sure.

7 MR. UNDERWOOD: And I think it came through in  
8 what counsel said. The RMS Titanic case refers to the  
9 liability of a foreign sovereign. It doesn't refer to the  
10 taking of a right, and I'll rest on that, and I appreciate  
11 it. Thank you.

12 THE COURT: Okay. Thank you. All right. It's  
13 1:30. We have probably another two or three hours at most.  
14 Does it make sense to take a break for lunch?

15 MAN: Your Honor, that actually is exactly what I  
16 was going to suggest. And just for people who are following  
17 the hearing, we have the (indiscernible) and Bridges, I  
18 think, objection up next, then insurers, then pro ses, and  
19 then whatever miscellaneous matters are remaining with  
20 respect to the releases. I think the allocated time for  
21 those things is actually a little bit under three hours. So  
22 hopefully we will be able to keep to that, but we'll see how  
23 the afternoon goes.

24 THE COURT: Okay. So I'll come back at 2:30 then.

25 MR. UZZI: Your Honor, if I may, just before we



1 break, I have a comment that I hope is helpful as it relates  
2 to narrowing the release a little bit. And again for the  
3 record, Gerard Uzzi of Milbank for the Ray Sackler family.  
4 Now, I realize, Your Honor, when I made the presentation  
5 earlier, I said something, with I meant, and it's a little  
6 inconsistent with one of the words on the page, which is  
7 there is no release of tax liability. But the carve-out for  
8 that is in the definition of excluded claim, and when I went  
9 back and checked --

10 THE COURT: But that's been there for a while.

11 MR. UZZI: Well, and it has been, Your Honor. And  
12 I realize, though, I said any taxes. What it says in  
13 excluded claims is income tax, and we meant any tax. And so  
14 we could strike the word income. And just -- I know people  
15 are preparing for, you know, possible argument after lunch.  
16 And just if that helps simplify things, I wanted to make  
17 that announcement prior to the break. That's all.

18 THE COURT: Okay. That's good. Thank you. All  
19 right. So again --

20 MR. UZZI: You're welcome.

21 THE COURT: -- we'll come back at 2:30.

22 (Recess)

23 THE COURT: Okay, good afternoon. This is Judge  
24 Drain. We are back on the record In re Purdue Pharma LP and  
25 the confirmation hearing.

1           The next matter, or next topic rather, of oral  
2           argument I believe is the argument on objections filed by  
3           Mr. Overton and his counsel to Creighton Bloyd, Stacey  
4           Bridges, and Charles Fitch. Creighton Bloyd actually had  
5           two objections. The other two people joined with him in  
6           one. And I'm sorry, I said Overton. And I apologize, Mr.  
7           Ozment, it's Mr. Frank Ozment.

8           So I think the Debtor's counsel is going to go  
9           first on this and then we were going to hear from Mr.  
10          Ozment.

11          MR. TOBAK: That's correct, Your Honor. For the  
12          record, it's Marc Tobak from Davis Polk for the Debtors.

13          Reserving most of our time for rebuttal, I want to  
14          make two points with respect to the objections by Mr. Bloyd,  
15          Ms. Bridges, and Mr. Fitch to notice provided to  
16          incarcerated unknown claimants.

17          And the fundamental point, Your Honor, is that  
18          this is not their objection to raise. They do not argue  
19          that they were not provided with the adequate notice, and  
20          they can't. That would be contradicted by the facts.

21          According to the timestamp on Ms. Bridges' proof  
22          of claim, she filed just three days after this Court entered  
23          the bar date order in February 2020. And Mr. Bloyd filed  
24          his proof of claim in June 2020.

25          Mr. Fitch, by the way, hasn't filed a proof of

1 claim even though he is a plaintiff in an adversary  
2 proceeding against the Debtors. And we have been in contact  
3 with his counsel since at least January of this year.

4 So their objection to notice is raised on behalf  
5 of other parties who, as far as we were aware, Mr. Ozment  
6 does not represent in this proceeding, and as far as we are  
7 aware, not before the Court. Mr. Ozment's clients,  
8 therefore, lack standing to assert the rights of other  
9 parties in attempt to thwart confirmation of the plan.

10 And I quote from the Second Circuit's opinion in  
11 Kane v. Johns-Manville, which is 843 F.2d 636 at 642,  
12 "Generally, litigants in federal court are barred from  
13 asserting constitutional and statutory rights of others in  
14 an effort to obtain relief for themselves." That rule  
15 precludes Mr. Ozment's clients from raising the alleged  
16 notice rights of others.

17 Indeed, the Second Circuit's decision in Kane is  
18 almost an exact parallel here. There, an asbestos claimant  
19 in Johns Manville bankruptcy attempted to appeal on the  
20 ground that other asbestos claimants had not obtained  
21 adequate notice. The Second Circuit refused to entertain  
22 that appeal, and it held that an objector who had himself  
23 received notice could not assert the alleged rights of third  
24 parties.

25 Judge Newman, for the panel, noted that, "The

1 general rule that third party standing is particularly  
2 relevant in bankruptcy proceedings, as parties may often  
3 find it personally expedient to assert the rights of others  
4 in attempt to block confirmation of a plan." And that quote  
5 is from 843 F.2d at 645.

6 I don't doubt the sincerity of Mr. Ozment or his  
7 clients. But in this case where his three clients stand,  
8 just as in Kane, opposed to over 95 percent of the voting  
9 creditors in their class, opposed to the statutory  
10 fiduciary, all unsecured creditors, and also opposed to the  
11 Ad Hoc Group of individual victims, there is more than  
12 sufficient reason to conclude that his clients lack standing  
13 to assert the rights of others.

14 I also briefly note that the objection was quite  
15 untimely. Your Honor approved the Debtor's extraordinary  
16 and exhaustive noticing program in February 2020. And that  
17 program was expanded through the extended bar date order,  
18 which is at Docket 1221, on June 3rd, 2020. And as Ms.  
19 Finigan testified earlier, the Debtors engaged in yet  
20 another additional and extensive noticing program in  
21 connection with the confirmation hearing. And that was  
22 approved on June 3rd of this year at Docket 2988 in the  
23 exposure statement order. Mr. Ozment and his clients never  
24 before raised these issues until filing their objections on  
25 July 19th.

1           With all respect, had they wished to alter the  
2       notice program rather than belatedly point to it as an  
3       obstacle to confirmation, it could have been raised earlier  
4       at a time in 2020 or 2021 when it might have -- when things  
5       might have been changed.

6           With that, I will reserve the rest of our time for  
7       rebuttal.

8           THE COURT: Okay. Do you want to -- there is a  
9       second declaration. Are you going to deal with that  
10      separately? A second objection by Mr. Creighton.

11          MR. TOBAK: I believe we addressed all -- both the  
12      Bloyd and Bridges and --

13          THE COURT: I'm sorry, Mr. Creighton Bloyd.

14          MR. TOBAK: Mr. Bloyd, correct. So that's the one  
15      at -- I think it's Docket 3277.

16          THE COURT: Right.

17          MR. TOBAK: We'll rest on our papers with respect  
18      to that unless the Court has any questions and rebuttal to  
19      Mr. Ozment's argument.

20          THE COURT: All right. So you're reserving  
21      rebuttal on that one. Okay.

22          MR. TOBAK: Correct. Thank you.

23          THE COURT: Okay. All right, Mr. Ozment.

24          MR. OZMENT: Your Honor, thank you. This is Frank  
25      Ozment, and I represent Creighton Bloyd, Stacey Bridges, and

1 Charles Fitch.

2 With respect to the Article Three and case or  
3 controversy issue, I'm not familiar with the case that he  
4 cited. But I would point that we are not bringing a case or  
5 controversy here. There is a case or controversy already.  
6 I think, you know, the power of Congress to regulate  
7 bankruptcy under Article 1, Section 8, is really what this  
8 is about, is our coming in and saying, you know, we don't  
9 think this is fair.

10 With respect to Ms. Bridges in particular, while  
11 she is not presently incarcerated, she certainly has been.  
12 And, you know, that threat remains. So to the extent that  
13 there is some issue there, perhaps it's capable of  
14 repetition but (indiscernible).

15 The more important thing I think is to get to the  
16 heart of what we're saying here. And I normally don't read  
17 a closing argument to a judge, but in the interest of time,  
18 I wrote this one down.

19 In Mullane v. Central Hanover, the court  
20 recognized that due process requires a debtor to give notice  
21 to a creditor before the creditor's claims could be  
22 extinguished. If the identity of the debtors and their  
23 whereabouts are unknowable, then those can be by  
24 publication. If the identity and whereabouts are reasonably  
25 ascertainable, the creditor cannot rely merely on those by

1 publication absent some other extraordinary circumstances.

2 Over the years, courts have recognized that  
3 creditor (indiscernible). The creditor has a lien, the  
4 debtor generally has to do a little more. The creditor is  
5 unsecured perhaps by publication by notices where acceptable  
6 if the creditor is unknown.

7 Here, there is no doubt, and Christina Pullo  
8 testified about it in her declaration but also in cross, the  
9 Debtors made a herculean effort to notify a lot of people.  
10 And to a large extent, they appear to have succeeded, with  
11 one very notable exception.

12 Their efforts were focused on people in the free  
13 world, not so much people in prison. Normally, this might  
14 not matter much. In an ordinary case, notice provided to  
15 the free world might leak over into the incarcerated world.  
16 And if this were a case about promissory notes and the  
17 creditors were all banks, well, you wouldn't expect to find  
18 too many creditors in prison, or at least in federal prison  
19 -- I'm sorry, in state prison.

20 But this is not a normal case. This is a case  
21 about addiction. Addiction drives people to crime, and  
22 everybody knows that. Prisons are disproportionately likely  
23 to house people suffering from addiction. Moreover, this  
24 was noticed during a period in American History that was  
25 very nearly unique. A pandemic, when common sense dictates

1       that the public not go in and out of prisons, which of  
2       course are places where social distancing is pretty much  
3       impossible.

4               While Ms. Pullo I think gave very good testimony  
5       and certainly put some of my concerns (indiscernible) notice  
6       of the free world, it was also clear from her testimony that  
7       the Debtors did very little to alert prisoners in particular  
8       about the need to file claims.

9               This is particularly unfortunate in this case --  
10       and this goes somewhat to Mr. Bloyd's objection, Your Honor  
11       -- because victims should have been lienholders under the  
12       Mandatory Victims Restitution Act. The United States and  
13       the Debtor basically agreed that victims would not get their  
14       rights under the MVRA because it would take too long to  
15       figure out who they were or just generally to calculate what  
16       they would receive.

17               And at this point, I want to emphasize that was  
18       not a proceeding in which Davis Polk represented the  
19       Debtors.

20               Ultimately, that issue may be a matter for the  
21       sentencing court to revisit. It may ultimately be something  
22       that Congress wants to take up. But in the meanwhile, that  
23       deprivation of lienholder status and that effort to ignore  
24       the rights of victims under the MVRA -- sorry about that,  
25       Judge -- aggravates this situation that we (indiscernible).



1           Personal injury victims might argue that their  
2       liens should prime those of the (indiscernible) states.  
3       Right now, we are merely trying to avoid the injury that  
4       resulted from the lack of notification. Interestingly --  
5       well, I'll just skip that point.

6           There is a solution to all this, although this not  
7       be the time, place to take it up. Bridges and Bloyd filed  
8       proofs of claim on behalf of all people similarly situated  
9       to them. That is to say living former opioids addicts who  
10      are in active recovery. Perhaps allowing their claims to  
11      serve as timely filed proofs of claim will overcome the  
12      (indiscernible) notice, especially for those who are locked  
13      up.

14          As a practical matter, this may not mean much from  
15      the perspective of outsiders in the free world. For  
16      prisoners, however, the recovery of amounts as low as \$3,500  
17      is life-changing. It can pay off fines, pay the fees  
18      necessary to get into community corrections, or pay child  
19      support.

20          But, again, the proof of claim issue is not before  
21      the Court today. We have filed a motion to allow those  
22      proofs of claim to be treated as adequate for satisfying the  
23      bar date. However, we don't have a hearing date on that  
24      yet. I thought we did, and I called Ms. Li yesterday and  
25      she said she didn't (indiscernible).

1           The issue today is whether the Debtors proved that  
2           they provided notice to one of the most densely-concentrated  
3           populations of opioid use disorder victims in the nation,  
4           that is to say the men and women who are incarcerated. I  
5           don't think it's very hard to find those people. They have  
6           publicly-listed addresses. At each address, the  
7           concentration of victims is high.

8           I respectfully submit, and somewhat reluctantly  
9           submit in light of all the work that's gone into this case,  
10          that confirmation should be denied unless and until the  
11          Debtors are going to get or allow the prisoners formally to  
12          file late claims.

13          And that ends my written statement, Your Honor.  
14          And with respect to Creighton Bloyd's objection, I will tell  
15          you that I filed that because I felt as if I did not file  
16          it, then I would not be able to take it up with the United  
17          States District Court when sentencing is concluded. I don't  
18          know, quite frankly, that there is much that you can do  
19          about that in this proceeding, but I did feel like it had to  
20          be (indiscernible). And I'll be glad to take questions on  
21          it if you like.

22          THE COURT: Well, I have reviewed the Mandatory  
23          Victims Restitution Act. I don't think I have questions on  
24          it. And ultimately that is an act that applies I think at  
25          the sentencing stage. So I don't think I have any questions

1       there.

2               As far as the notice point is concerned, I think  
3       standing is probably an absolute barrier here since it does  
4       not seem to me that Creighton Bloyd or Ms. Bridges or Mr.  
5       Fitch have an injury to be addressed by the relief sought in  
6       the first objection to them. So I don't think I have  
7       questions, Mr. Ozment.

8               MR. OZMENT: Thank you, Your Honor. That's it for  
9       me.

10              THE COURT: Okay. You're on mute.

11              MAN: Yes. I see Mr. Shore has joined, and I  
12       defer to him if he wishes to respond to any points regarding  
13       the treatment of personal injury claimants under the TDPs.

14              MR. SHORE: Two points, Your Honor. It's Chris  
15       Shore from White & Case on behalf of the Ad Hoc Group of  
16       personal injury victims, which includes 55,000 individuals,  
17       including incarcerated individuals.

18              It's unclear to me what the status is of the full  
19       objection. We've heard some argument today on it. I'd like  
20       to address the class proof of claim issue because I think to  
21       some extent what is happening today, or if the Court  
22       confirms the plan is going to affect the class claims  
23       status. Two, to address the claims and the objections that  
24       somehow either of the TDPs is disproportionately unfavorable  
25       to incarcerated individuals or otherwise does not take into

1 consideration their unique circumstances.

2 On the first point, the TDPs, which are plan  
3 supplements -- I think the 16th plan supplement was just  
4 filed -- the Court will be approving those. Those require  
5 that anybody who receives money from the TDP has an  
6 individual proof of claim on file.

7 So while Mr. Ozment is saying he wants to reserve  
8 the right to seek class treatment, he hasn't done it yet.  
9 And if you -- without getting too far into it, the Musicland  
10 factors that would go into whether or not that claim would  
11 be filed, it would certainly be our position that the  
12 allowance of a class proof of claim, which would, according  
13 to the papers, take the personal injury class from 135,000  
14 individuals to 1.5 million individuals, would affect the  
15 administration of the estate going forward because the whole  
16 TDP gets upended, distributions are made uncertain, and  
17 you're going to have to change a central feature of the TDP,  
18 which is that it's being done on an individualized basis.

19 So, you know, while I appreciate he's not pressing  
20 and not seeking today class treatment for the claims, we are  
21 going to have some distinct views with respect to whether  
22 that would ever be appropriate.

23 But to be clear, I don't think the objection is  
24 that the TDPs as drafted were drafted in bad faith. I think  
25 the point Mr. Ozment was making in the objection was it

1 doesn't take into consideration the unique facts of  
2 incarcerated individuals.

3 And I hope Your Honor can see from the TDPs and  
4 what have been said about them, there was a great deal of  
5 thought and effort that was put into balancing the due  
6 process issues on the one hand with code requirements and  
7 the need to get money out to individuals in a timely  
8 fashion. And to some extent, it was a zero sum game. The  
9 more money that's spent on process, the less money there is  
10 to distribute at the end of the day.

11 The -- one of the central premises of the TDPs is  
12 the requirement under the Code that people file proofs of  
13 claim. And the TDP, the notice in the TDP backs off of the  
14 Debtor's incredible notice program, both at the -- or with  
15 respect to both bar date times.

16 Even so, there are provisions in the TDP which  
17 allow individuals with late filed claims to either come to  
18 the Court and seek relief under Rule 9006 or go to the  
19 claims administrator, who has authority in his or her  
20 discretion to allow the claim as timely. And that's  
21 Footnote 6 in the non-NAS TDP.

22 So there's nothing discriminatory against  
23 individuals who are incarcerated. They have the same right  
24 and ability to file a late claim as anybody else. Nor is  
25 the actual claims process discriminatory. Every claim under

1 the Code is required to be substantiated with proof.

2 There are two -- and maybe Mr. Ozment can address  
3 it with more specificity. There are two ideas I think  
4 buried in the concerns of incarcerated individuals. One is  
5 it just takes them longer to get the health records that are  
6 necessary to substantiate their claims. Again, under the  
7 TDP, the claims administrator has discretion to elongate the  
8 deadlines for any given individual. That's Footnote 8 in  
9 the non-NAS TDP. So there is already built-in flexibility  
10 to the extent it's a question of timing.

11 We extended the question of being able to gain  
12 access to records at all, which is an issue faced by some  
13 incarcerated individuals. Again, the TDP provides that if  
14 the individual is not able to gain access to their medical  
15 records, they can file declarations to that effect and make  
16 the necessary showings to obviate the need for their actual  
17 medical records to substantiate.

18 So, you know, I'm not sure what else we can do  
19 consistent with the law and the Code to relieve the  
20 obligations that exist under the Code with respect to people  
21 having to file proofs of claim and people having to  
22 substantiate proofs of claim with proof. Because we just  
23 can't have a TDP in which any individual can come forward  
24 without any proof and take money out of the PI trust that is  
25 otherwise slated for real individuals with real proof and

1 real harm.

2 THE COURT: Okay. Thank you.

3 MR. OZMENT: Your Honor, may I briefly address  
4 that?

5 THE COURT: Well, I just want to make sure -- do  
6 the Debtors have anything more to say on this point, or  
7 shall I just hear briefly from Mr. Ozment?

8 MAN: With regard to the TDPs, no. With regard to  
9 notice, while Your Honor's ruling with respect to standing  
10 probably disposes of the issue, just given the importance of  
11 notice and its scope of notice provided, I want to note just  
12 two points if that's appropriate right now.

13 THE COURT: Okay.

14 M: The first is that under the law, constructive  
15 notice by publication is sufficient notice to unknown  
16 claimants. It's not accurate to say that everyone who is  
17 incarcerated was provided notice through a constructive  
18 means such as publication or television or other forms of  
19 ads. To the contrary, any known claimants, as is set forth  
20 in Ms. Finigan's declarations, were provided with actual  
21 notice by mail.

22 Secondly, in response to a question from Mr.  
23 Ozment in the hearing, she testified that there was actual  
24 specific outreach by mailings directed to prison outreach  
25 organizations and to entities responsible for the management

1 of prison facilities, which is set forth in her testimony of  
2 August 12th, 2021 at Transcript, Page 76, Lines 10 through  
3 18.

4 And the third point builds off those two. And on  
5 the other hand, we don't have any record evidence to support  
6 Mr. Ozment's and his clients' assertions regarding the scope  
7 of notice and what is or isn't available in prisons. And  
8 while, again, we don't doubt the sincerity of any of them or  
9 in any way discount the importance of providing relief to  
10 those who are incarcerated, on the other hand, there just  
11 isn't record evidence of those assertions. And with that,  
12 we rest on our papers.

13 THE COURT: Okay.

14 MR. OZMENT: Your Honor, first, a quantitative  
15 issue. This would not amount (indiscernible) the claims.  
16 There are roughly 1.2 million in physical custody of state  
17 prisons. And, you know, roughly 20 percent of those  
18 probably use opioids even while in custody. But that  
19 doesn't mean that they product manufactured by Purdue. So  
20 we're not talking about flooding the trust with those  
21 claims.

22 With respect to the issue regarding trust  
23 distribution procedures, we are not asking for relief on it.  
24 As a practical matter, by the time a prisoner arrives in  
25 prison as opposed to jail, the people who run those



1 correction facilities know pretty much everything there is  
2 to know about them. And so hopefully to the extent that  
3 people have had an opioid use disorder, problem that's well  
4 known, and also perhaps even a level of what drug was it.  
5 So, for example, you know, some drug courts will keep up  
6 with, you know, was it OxyContin, Lortab, what led you  
7 astray.

8           So we're not asking for relief on it. But as a  
9 practical matter, as you saw in the hearing involving  
10 Augustus Evans earlier, I think it was last week, you know,  
11 prisoners need help navigating this. And it's very  
12 difficult to motivate and engage people to help them,  
13 especially volunteers, when, you know, it could be sort of a  
14 dry well and in the discretion of my fellow bar member here  
15 in Birmingham, who is a fine fellow, Ed Gentle, who is the  
16 claim administrator.

17           I think, you know, we're going to get people  
18 engaged in helping these folks, as we did with voting rights  
19 issues and things of that nature. They need to have some  
20 understanding that, you know, if you get your stuff together  
21 and it's in order, you're not totally wasting your time.  
22 Otherwise, these claims are not going to get filed. It's  
23 just going to be too overwhelming for them.

24           And finally, in terms of filing a proof of claim  
25 late and so forth, one of the last things in the world we

1 want to do is snow the Court, or Mr. Gentle, or anybody else  
2 with a ton of paperwork on whether somebody should be  
3 allowed to file a late claim.

4 What we're talking about here is just one  
5 (indiscernible). Okay? We're not asking for the right to  
6 vote as we did -- as one of the earlier petitioners did.  
7 We're just saying there's a problem with notice. And it  
8 needs to be addressed so that those people who are, you  
9 know, perhaps not as poignant and heart-tugging as some of  
10 the other stories, can file claims where it's appropriate.

11 So much of this is getting ahead of ourselves. But  
12 since we touched on this issue, I wanted to clarify that  
13 we're not, you know, going (indiscernible).

14 THE COURT: Okay. Thank you. All right, thank  
15 you both.

16 I think the next topic that is on is objections by  
17 certain insurers to either aspects of the plan or proposed  
18 aspects of the confirmation order. And the Debtors, again,  
19 will go first, as will the -- they will be followed by the  
20 Ad Hoc Committee of Certain States and Other Governmental  
21 Entities. And then we'll hear from Navigators' counsel, I  
22 think Mr. Anker.

23 So who is going to be speaking on behalf of the  
24 Debtors on this?

25 MR. SINGER: Good afternoon, Your Honor. It's

1 Paul Singer from Reed Smith on behalf of --

2 THE COURT: Okay, afternoon.

3 MR. SINGER: Thank you, Your Honor. We are  
4 special counsel -- special insurance counsel to the Debtors.  
5 I will be (indiscernible) with provisions of Section 510 of  
6 the plan, which we believe as written is appropriate and  
7 consistent with applicable law. Emily Grim will be speaking  
8 on behalf of the AHC and will address the findings of fact  
9 and the conclusions of law to which the insureds have  
10 objected.

11 Section 526(I) of the plan, Your Honor, provides  
12 that the Master Disbursement Trust will receive the Debtor's  
13 rights under any insurance policy that may -- and I  
14 emphasize may -- provide coverage for opioid claims.

15 The purpose of the transfer is to enable the MDP  
16 to pursue recoveries under the Debtors' policies, and if  
17 successful, would distribute any proceeds recovered to  
18 opioid creditors pursuant to (indiscernible) the plan.

19 This arrangement is typical of those found in mass  
20 tort cases. The assignment of insurance rights has been  
21 proved under Section 1123.05, most notably by the Third  
22 Circuit in the Federal Mogul case.

23 To be clear, the plan does not require any  
24 findings as to the value of the insurance or the extent to  
25 which the policy would actually cover opioid claims. But

1 the plan does seek findings intended to insure that the plan  
2 itself doesn't somehow create additional risk to recover  
3 that the Debtors would not have faced prepetition. For that  
4 reason, the plan includes language in Section 510 that  
5 confirms, consistent with applicable law, that this Court's  
6 findings are binding on insurers but then any other defenses  
7 to coverage insurers may have are preserved.

8 According to certain insurers, they should be  
9 entitled to argue in first confirmation coverage litigation  
10 that keep components of the plan vitiates coverage. Under  
11 objection, they assert that the plan would insulate them  
12 from any aspects of the plan or the confirmation order that  
13 may be detrimental to these arguments. They make these  
14 assertions notwithstanding the understanding the adversary  
15 proceeding that findings of the Court would be binding on  
16 them in the coverage litigation.

17 Quite simply, the law does not permit the insurers  
18 to undermine the plan's settlement framework, but to use it  
19 as a basis to stake their coverage obligation. To the  
20 contrary, the Bankruptcy Code, the policies underlying it  
21 that the parties should negotiate a plan that settles  
22 claims, and the insurers' own policies, may of which contain  
23 provisions that, notwithstanding the bankruptcy of the  
24 insured, they remain in effect. All of that prohibit the  
25 insured from seeking an exemption from the (indiscernible)

1 of the plan, the confirmation order for the Bankruptcy Code.

2 To be sure, neither the Bankruptcy Code nor its  
3 prior iteration in 1898 or 1939 requires the inclusion of  
4 the broad neutrality language sought by the insureds.

5 Indeed, the term neutrality as used by the insureds is a  
6 misnomer. What the insurers are seeking are special  
7 exemptions from rulings that are otherwise binding on them  
8 as they would be on any other party in interest. There is  
9 no law saying matters that are decided in connection with  
10 the plan confirmation can't be used in a subsequent  
11 insurance coverage action. Indeed, Your Honor confirmed  
12 this we believe in the insured's adversary proceeding --

13 WOMAN: Quiet. I think they heard me yell.

14 MR. SINGER: Am I being heard, Your Honor?

15 THE COURT: People should keep their phone on mute  
16 unless they are speaking.

17 MR. SINGER: As I was saying, the principle that  
18 plan confirmation orders can be used in other proceedings is  
19 longstanding. Discharge orders are often used with effect  
20 to the release of claims under a plan in a state law  
21 proceeding. And indeed, free and clear orders likewise  
22 issued under Section 363 are often used in state court  
23 proceedings to demonstrate that there's no success or  
24 liability.

25 The carveout that the insurers seek here, if you

1 call it neutrality, was developed in the early 2000s in the  
2 Combustion Engineering and Pittsburgh Corning cases as a  
3 tool to limit the ability of a debtor's (indiscernible)  
4 frustrate or delay the plan confirmation process.

5 Indeed, each of those cases went to the Third  
6 Circuit several times, and the Pittsburgh Corning case took  
7 over a decade to get to confirmation.

8 The neutrality language that the insurers seek  
9 indicate that they would have no -- the confirmation would  
10 have no impact on their rights. And by that, they would be  
11 deprived of standing to object or interfere with  
12 confirmation. Such provisions (indiscernible) on the  
13 specific considerations of each case. Here, no one has  
14 concluded the insureds are deprived of standing. Indeed,  
15 they have appeared and are being heard here.

16 As such, as any other party in interest, the  
17 insurer should not be able to deny the existence of a plan  
18 confirmed by this Court in conformity with the Bankruptcy  
19 Code and the findings by this Court contained in the order  
20 approving the confirmation and the settlements embodied in  
21 the plan. Accordingly, we believe that the language as set  
22 in Section 510 of the plan is appropriate and  
23 (indiscernible).

24 Unless the Court has questions, I would like to  
25 turn the podium over to Ms. Grim on behalf of the AHC.

1           THE COURT: I don't think I have any questions for  
2           you, Mr. Singer. If I have questions, it goes to -- or they  
3           go to what besides the transfer of the policies to the  
4           trust, to the MDT, are the Debtors and their allies seeking  
5           to put in the confirmation order. But I think Ms. Grim is  
6           going to discuss that.

7           MR. SINGER: If she doesn't, I can come back to  
8           it, Your Honor. Thank you.

9           THE COURT: Okay, fine.

10          MS. GRIM: Thank you, Mr. Singer. And good  
11          afternoon, Your Honor. Emily Grim, Gilbert LLP, counsel to  
12          the Ad Hoc Committee of Governmental and Other Contingent  
13          Litigation Claimants.

14          Your Honor, the Debtors have included a number of  
15          findings and conclusions in the proposed confirmation order  
16          that are necessary to preserve the value of the insured's  
17          rights being transferred to the MDT.

18          We provided Your Honor with a list of these  
19          findings in Exhibit A in our joint reply to the insurer's  
20          confirmation objections, so I won't read them word for word  
21          unless you'd like me to. But generally speaking, they  
22          provide that the settlements embodied in the plan are  
23          reasonable and were negotiated in good faith, that the  
24          insurers had notice and an opportunity to participate in the  
25          negotiations, and that the negotiation and resolution of the

1 Debtor's liabilities through these bankruptcy proceedings  
2 shall not excuse any insurer from its coverage obligations,  
3 regardless of any contrary policy terms.

4 The purpose of these findings is to ensure that  
5 nothing about the plan itself or the Debtor's actions in  
6 negotiating and proposing the plan diminishes the value of  
7 the insurance assets being transferred to the MDT.

8 Now, certain of the Debtor's insurers have argued  
9 in their plan and confirmation objections that this Court  
10 can't issue these rulings. Their view is that they should  
11 be entitled to argue in coverage litigation that key  
12 components of the plan release them from any and all  
13 liability under the policies.

14 One of the defenses that they've specifically said  
15 that the plan must preserve for them, that the plan's  
16 settlement of the opioid liabilities violates the policy's  
17 consent to settle provisions. They argue that these are  
18 just your typical, non-core, state law based coverage  
19 defenses, and therefore that they must be decided in the  
20 insurance adversary proceeding and not here. We would argue  
21 that that's not accurate for a number of reasons.

22 The first, these findings don't require the Court  
23 to rule on garden variety coverage disputes. They don't  
24 require the Court to rule on whether the policies provide  
25 coverage for opioid liabilities, they don't require the



1 Court to determine the value of any such coverage. What  
2 they seek is a determination that the insurers cannot  
3 disclaim coverage based solely on the Debtor's actions in  
4 this bankruptcy or on the contents of the plan itself.

5 We would argue that that's an issue that's  
6 inextricably intertwined with the Debtor's ability to  
7 marshal, preserve, and distribute their assets to creditors,  
8 satisfaction of their liabilities, and that it couldn't  
9 exist outside of bankruptcy. That makes them core issues  
10 properly decided by this Court as part of confirmation and  
11 not, for example, by a Bermuda arbitration panel considering  
12 coverage disputes post-confirmation.

13 The second reason that these findings are  
14 appropriate for confirmation is that they are required by  
15 the plan. The Ad Hoc Committee and the other creditors that  
16 voted in favor of the plan did so with the understanding  
17 that the MDT will be entitled to access the same rights to  
18 coverage as the Debtors for the opioid liabilities.

19 Now, they agreed to take on the risk that insurers  
20 could raise garden variety coverage defenses. For example,  
21 that an occlusion bars coverage for the claims. But they  
22 did not agree to take on the additional risk that the plan  
23 itself would destroy the value of the insurance asset. And  
24 in fact --

25 THE COURT: Could I interrupt just for a second?

1 MS. GRIM: Of course.

2 THE COURT: Sorry, you can go ahead.

3 MS. GRIM: Of course. They negotiated language in  
4 the plan specifically intended to protect against that risk.  
5 And I'll give you some cites.

6 Section 9.10 of the plan requires that the  
7 confirmation order contain a finding that the insurance  
8 rights transfer is effective, notwithstanding any policy  
9 provisions to the contrary.

10 THE COURT: Can I interrupt you? I understand  
11 this is a negotiated provision of the plan. But if it -- if  
12 that violates the Bankruptcy Code in some way, then it  
13 doesn't matter, right, other than that the parties'  
14 intentions with regard to the plan are frustrated. It  
15 doesn't --

16 MS. GRIM: Yeah. I think Your Honor has to  
17 determine -- sorry.

18 THE COURT: The argument to override this is  
19 really the argument under 1123(a)(5) and the caselaw.

20 MS. GRIM: That's correct, Your Honor.

21 THE COURT: Okay.

22 MS. GRIM: Section 5.6(I), just to give you the  
23 other cite in the plan so that you have it, requires that  
24 the confirmation order contain findings necessary to  
25 preserve the MDT insurance rights. These provisions have

1       been in the plan since its inception. And omitting the  
2       findings they require would be a material change to the  
3       plan.

4               A third reason these findings are appropriate is  
5       that they are consistent with the Bankruptcy Code and the  
6       policies underlying it. The purpose of the Code, as Your  
7       Honor well knows, is to enable debtors to use their existing  
8       assets to resolve liabilities promptly and efficiently.

9               If insurers were entitled to control a debtor's  
10       settlement of its liabilities in bankruptcy, that would  
11       frustrate that purpose. It would give insurers, who have no  
12       fiduciary obligations to the estate and who, frankly, have  
13       every incentive to use the reorganization process to delay  
14       or minimize their coverage obligations, an effective veto  
15       right over the plan.

16              Accepting the insurers' argument would mean that  
17       this Court is powerless to prevent a debtor's insurers from  
18       frustrating the Chapter 11 process, and we just don't think  
19       that's an outcome that the Code contemplates here. We think  
20       that's the very reason Congress gave bankruptcy courts tools  
21       like Section 1123(a)(5) to be implemented into the plan.

22              I would also like to address briefly the insurers'  
23       reference to other cases where the plan and confirmation  
24       order may have, for whatever reason, preserved all coverage-  
25       related issues (indiscernible) confirmation. And I have two

1 responses to that.

2 The first is I think there is emphasis that not  
3 all plans have preserved coverage issues for resolution  
4 post-confirmation. The Babcock case we cited in our reply  
5 to the insurer's plan objections included findings in the  
6 confirmation order that the plan did not violate any consent  
7 to settle provisions.

8 Second, these other cases cited by the insurers  
9 are largely irrelevant because every case is different. I  
10 can't really speak to the specific considerations at issue  
11 in those cases, but I can tell you that the findings the  
12 Debtors seek here are critically important to this plan  
13 because of its unique abatement-based trust structure.

14 If you look at the more traditional asbestos trust  
15 structures, claims typically are channeled to a trust, and  
16 then the trust liquidates and pays individual claimants post  
17 confirmation. So in that scenario, if the insurers  
18 (indiscernible) about what the claims were worth or whether  
19 the trust's award was reasonable, the parties would have an  
20 opportunity to litigate that dispute and its impact on the  
21 coverage post-confirmation.

22 But here, there is no post-confirmation  
23 liquidation process for most of the creditors' claims.  
24 There is no point, for example, at which NOAD is going to be  
25 valuing individual claims. So there's really no other

1 opportunity for the insurers and the MDT to establish the  
2 value of any liabilities dissolve by the plan or the  
3 reasonableness of that resolution. So that's why any  
4 dispute should be resolved here during confirmation and why  
5 this Court's ruling on these issues should be binding on the  
6 insurers.

7 As Your Honor knows, we have addressed the  
8 insurers' objections to specific findings and conclusions in  
9 our papers. So in the interest of time, I'll just address  
10 any specific findings on which you have questions. But  
11 before I do that, I do have one issue I would like to clean  
12 up the record for. And that is on the finding that you  
13 referenced earlier on the assignment of insurance rights.

14 The insurers seek to modify Confirmation Order  
15 Finding LE, which states that the Bankruptcy Code authorizes  
16 the transfer and vesting of the MDT transferred assets  
17 notwithstanding any terms of the Purdue insurance policies  
18 or provisions of non-bankruptcy law.

19 The objecting insurers have asserted that since  
20 they previously notified the Debtors that they don't object  
21 to the transfer of the MDT insurance rights, the Court  
22 shouldn't render what they call an advisory ruling regarding  
23 the Code's authorization of such transfer. Instead, they  
24 propose a finding that basically says the objecting insurers  
25 have not challenged the validity of the transfer.

1           In our joint reply to the insurers' confirmation  
2       objections, we noted that a ruling on this issue would not  
3       be advisory because another insurer, Chubb, had objected to  
4       the transfer. We understand that Chubb has formally  
5       withdrawn its objection on that point, so we do want to make  
6       the record clear on that.

7           But I do think it's important to emphasize that  
8       this withdrawal doesn't obviate the need for the finding.  
9       The finding addresses a crucial component of the plan,  
10      including in the confirmation order, and a condition  
11      precedent to plan confirmation. And in addition, the  
12      language proposed by the certain insurers doesn't indicate  
13      universal commitment from all insurers, including those  
14      insurers subject to Bermuda arbitration who have not  
15      appeared at confirmation. So it really just doesn't provide  
16      sufficient protection for the Debtors (indiscernible).

17           So I will pause now to address any questions Your  
18      Honor might have. And otherwise, I'll save any of my  
19      remaining time for rebuttal.

20           THE COURT: Okay. I think it's probably better to  
21      hear from Mr. Anker first and then I'll see if I have  
22      questions for you if you want to raise anything in rebuttal.

23           MS. GRIM: Thank you, Your Honor.

24           THE COURT: Thanks.

25           MR. ANKER: Thank you, Your Honor. Philip Anker,

1 Wilmer Cutler Pickering Hale & Dorr, for Navigators. Can  
2 you hear me okay, Your Honor?

3 THE COURT: Yes, fine. Thank you.

4 MR. ANKER: I am in a -- I apologize, Your Honor.  
5 I am on the West Coast. Came out for a niece's wedding.  
6 And so I'm in a hotel. And if the connection gets bad, I  
7 will do my best.

8 Your Honor, I am not in the habit -- and this will  
9 be the first time when I quote Admiral James Stockdale, who  
10 Your Honor may remember was Ross Perot's vice presidential  
11 candidate I think in '92, when at his debate, he said in a  
12 puzzled way that looked like it wasn't rhetorical, "Why am I  
13 here?" He got crucified for that, and I think that was  
14 unfair. History has shown it. But I am raising it as a  
15 rhetorical question, at least in part, because I don't know  
16 why we are here.

17 You have lots of complicated issues to resolve,  
18 and I echo the sentiments that someone had expressed earlier  
19 that, frankly, this is a case about the public interest more  
20 than a typical commercial bankruptcy.

21 Insurance coverage, however, is not one of the  
22 issues. And frankly -- and I will say this and it's not  
23 directed at Mr. Singer, it's not directed personally at Ms.  
24 Grim, it's certainly not directed at Davis Polk. But what I  
25 think we are fundamentally about here is an attempt by the

1     Gilbert firm and for coverage reasons to get precedent for  
2     other cases not before you where there are in fact tricky  
3     issues. There is nothing here that warrants the Court's  
4     intervention.

5             Let me start with the plan, which I hope I can  
6     deal with quickly, and then move to the findings and  
7     conclusions, which I think are where Your Honor is  
8     principally focused.

9             What I didn't hear Mr. Singer address was the  
10    basic point. We are prepared to live with the language --  
11    we suggested a minor tweak, a minor tweak -- the language  
12    that was in the plan that went out to vote. This is not our  
13    language. I agree, insurers have sometimes asked for five  
14    pages on insurance neutrality. The Debtor went out with a  
15    single sentence in their Fifth Amended Plan. That sentence  
16    we are prepared to live with. As I said, we asked for one  
17    tweak to it, which was to add a sentence that made it clear  
18    what we think Your Honor already said in the ruling in the  
19    adversary that while Your Honor would be making findings,  
20    the legal consequences of those findings for coverage would  
21    be for another day.

22            We made that clear to the Debtors on July 5th. We  
23    did not hear from the Debtors until they actually filed,  
24    they actually filed their Sixth Amended Plan very late on  
25    the night of the 15th. I saw it for the first time on the



1 morning of the 16th when I got up. And it was a complete  
2 rewrite. Instead of saying nothing in the plan, the plan  
3 documents or the order will one way or the other have any  
4 affect on the rights or obligations of the insurance  
5 companies or the rights or obligations of the Debtors, they  
6 then said, provided, however, everything can change it. The  
7 plan can change it, the plan documents can change it. Any  
8 order Your Honor has entered at any point in time in this  
9 bankruptcy, any order in other litigation can change it.

10 And think about that for a moment, Your Honor.  
11 Most of the plan documents we have not seen yet. They are  
12 going to be filed with -- ultimately at the time it's  
13 defined to include any document necessary when the plan goes  
14 into effect or to have it go effective.

15 There are provisions in documents that have  
16 already been filed that state, for example, that insurance  
17 policies provide coverage, something we may well dispute  
18 given products exclusions and the like. There are  
19 references to policies that we think were -- in fact at  
20 least some insurers think were settled and released long  
21 ago.

22 Think about every order Your Honor has entered. I  
23 have not, I will confess, followed this bankruptcy. One of  
24 the things that I think may be lost here is that until the  
25 adversary was filed, which was in 2021, no insurer thought

1       that this bankruptcy affected them at all because, frankly,  
2       given the products exclusions, my client and every other  
3       client thought that there would never be an attempt to get  
4       coverage here. You will hear the merits of that later. But  
5       I don't know what happened in 2020 in various adversaries or  
6       other cases, yet their language would cover that.

7               So we ask that you simply go back to and the  
8       Debtors go back to the language they had when they solicited  
9       acceptances of the plan. We have suggested a tweak. I will  
10      leave it to Your Honor whether it's appropriate or not. But  
11      frankly, the main issue there is just the basic language  
12      that went out in solicitation. And no one can argue on the  
13      other side the new languages required for confirmation, but  
14      the creditors overwhelming voted in favor of confirmation  
15      with the original language, and no one is suggesting that  
16      anyone is changing their vote, and no one is going to make  
17      that suggestion and file the motion and seek relief.

18             With that, unless Your Honor has questions, I  
19      thought I might move to the findings and conclusions. First  
20      --

21             THE COURT: Could I --

22             MR. ANKER: Sure.

23             THE COURT: And maybe this goes to the findings  
24      and conclusions point. But the first sentence that -- or  
25      the first question that the Admiral asked was who am I. And

1       then he said why am I here. And Ms. Grim has said that you  
2       don't represent all of the insurers. In fact, there are  
3       other insurers that are covered by arbitration agreements.  
4       Am I right about that?

5               So when I hear you talk about the revised language  
6       for the proposed findings of fact and conclusions, that's  
7       just from your clients, right?

8               MR. ANKER: Your Honor, let me try to take that  
9       on, the language with respect to the transfer or assignment  
10      of the policy. First, I represent Navigators, but I have  
11      been asked to argue on behalf of all objecting carriers. So  
12      none of the other carriers objected, including the ones in  
13      the arbitration. I also think -- and I will ask coverage  
14      counsel to correct me if I'm wrong -- they have -- and I  
15      think they've proposed this to Your Honor, to have a stay of  
16      the arbitration until and unless Your Honor, or if the  
17      reference is withdrawn, the district court, decides the  
18      insurance coverage action.

19              But the language we have proposed with respect to  
20      the transfer issue would specifically --

21              THE COURT: So much for arbitration being fast and  
22      efficient. But go ahead.

23              MR. ANKER: Your Honor, on that point I'm not  
24      going to disagree with you. But let me just read to you the  
25      last sentence. And this is our language. Your Honor, I

1 don't know if you have it in front of you.

2 THE COURT: I do.

3 MR. ANKER: I am looking -- okay. If you look at  
4 our blackline, the last sentence says, "In the absence of  
5 any outstanding objections, such transfer (indiscernible)  
6 the MDT insurance rights is authorized." It doesn't simply  
7 say no one will object, it says it's authorized. The only  
8 real difference is we want a predicate that says it's based  
9 on the absence of objection by those parties who actually  
10 filed an objection. And that goes to the point I was  
11 raising earlier.

12 Look, I think it's a very different case. But one  
13 of my insurance clients is in another case right now that  
14 almost has as much publicity as this case. And so is Ms.  
15 Grim on the other side. And there is an effort there to  
16 assign to the trust non-debtor insurance policies. We think  
17 that is not something that 1123 authorizes, including in the  
18 Third Circuit. And I think this is all about precedent for  
19 another case not before Your Honor that can be resolved  
20 then. Our language would make it a hundred percent clear  
21 that the transfer is authorized to the trust. That is going  
22 to preclude anyone from arguing that the transfer vitiates  
23 coverage. We simply want it as the predicate that there is  
24 no dispute over the issue. And because there's no dispute  
25 over the issue, the Court can go on and not resolve -- not

1 reach it.

2 As Ms. Grim notes, the only party that objected on  
3 this ground, Chubb, has withdrawn that objection. Mr.  
4 Copper of the Duane Morris firm is I believe on the line and  
5 can confirm that if Your Honor has any doubts. But I spoke  
6 to him specifically and got that representation and  
7 therefore feel comfortable that I can confirm with Ms. Grim  
8 set on the record.

9 I will also say that Debtors and the Committee  
10 suggested the stay of the arbitration. So it wasn't other  
11 insurers. But that's not my fight, Your Honor. That's an  
12 issue for another day about the wisdom, or lack thereof, of  
13 arbitration.

14 Let's look at the other findings. The second  
15 issue on which there is some slight disagreement is over  
16 Finding JJA, where we have stricken the second sentence and  
17 added the words, "viewed collectively" in the first  
18 sentence. This is a finding, quote, "The settlements  
19 reached between the Debtors, we would add viewed  
20 collectively" and the opioid-related claimants as embodied  
21 in the plan are reasonable and were entered in good faith  
22 based on arm's length negotiations. We then would strike  
23 such negotiation, settlement, or resolution of liabilities,  
24 shall not operate to excuse any insurer from its obligations  
25 under any policy notwithstanding any terms of such insurance

1 policy, including any consent to settle or pay first  
2 provision or provisions of non-bankruptcy law.

3 Let me explain what's going on here. But let me  
4 start with a predicate. No one is asking on our side for a  
5 finding (indiscernible) the finding Ms. Grim  
6 (indiscernible). We are not asking that Your Honor find  
7 that in fact the settlements do create any defenses  
8 (indiscernible). That is a question for another day to be  
9 decided again by Your Honor with full briefing and a full  
10 record.

11 Let's talk now about the two things, the two  
12 tweaks here. First, why viewed collectively? Well, this is  
13 an issue specific, Your Honor, to my client. My client,  
14 with respect to some of its policies, insured a particular  
15 debtor, Rhodes, R-h-o-d-e-s. The disclosure statement notes  
16 that Rhodes did not advertise or market any opioids at all.  
17 It just manufactured generics. There is nothing in this  
18 record, nothing in this record about it at all and whether  
19 to the extent it's contributing any settlement is or is not  
20 reasonable.

21 You may remember in the examination -- and if I  
22 butcher her last name, Your Honor, I apologize. Ms.  
23 Horewitz, the expert for the Committee. She acknowledged on  
24 cross that her evaluation of comparing the liabilities to  
25 the assets was done on an aggregate basis looking at all of

1 the debtors collectively, not individually.

2 So that brings me to the second point. Why strike  
3 the second sentence? Your Honor, I don't know whether --  
4 I'm not a coverage lawyer, as Your Honor knows. I am a  
5 bankruptcy lawyer. I don't know whether there are or are  
6 not defenses here relating to whether the Debtors violated  
7 policy provisions. But I do know this. There is no record  
8 before Your Honor. I know the following chronology. The  
9 mediation occurred in 2020. And it was not until 2020 there  
10 was an adversary and anyone had a clue -- I think you will  
11 get this when the evidence comes in in the insurance  
12 coverage action -- that the Debtors were even mediating and  
13 -- there was no clue that the Debtors would seek any  
14 coverage. What will the evidence be about whether the  
15 Debtors in connection with their mediation reached out to  
16 the carriers, spoke to the carriers, consulted with the  
17 carriers, sought the carriers' consent to any settlement?  
18 That -- and none of that evidence is before Your Honor  
19 today. What are the implications (indiscernible) about what  
20 that evidence is? That's going to turn on what state law  
21 may apply. Is it the law of New York, the law of New  
22 Jersey, the law of Oklahoma, the law of California? None of  
23 that in that briefing is before Your Honor, in part because  
24 the Debtors didn't seek these findings and didn't put them  
25 in their proposed order until after briefing had closed by a

1 month on plan confirmation objections.

2 We are not asking Your Honor to make any  
3 determination that somehow the Debtors have impaired  
4 coverage that otherwise would exist. We simply think that  
5 is an issue to be decided in this adversary proceeding upon  
6 a full factual record and a full legal briefing, none of  
7 which is before Your Honor today. And so not only would  
8 (indiscernible) due process where we had no notice before  
9 plan objections came in that these findings would be sought.

10 I will pause there. Section 9.1 and 5.6(I) that  
11 Ms. Grim and Mr. Singer referenced are all about transfer.  
12 The headings are about transfer and assignment. They have  
13 nothing to do with reasonableness of settlement. And so,  
14 no, there was no notice they would be seeking this finding  
15 or conclusion.

16 So, A, it's inconsistent with due process for them  
17 to seek it now. And, B, Your Honor doesn't have the  
18 evidence and doesn't have the briefing. And I will say it  
19 as clearly as I can. We are not saying, therefore, that  
20 there has been a waiver by the Debtors that they can't later  
21 argue that of course they can seek coverage, of course there  
22 is no problem here. But this is not the occasion.

23 And I'll just make one last point on that this is  
24 not the occasion. Your Honor has determined  
25 (indiscernible). This is not a case where insurance



1 coverage is a predicate to plan confirmation and  
2 feasibility. Your Honor has determined that whether or not  
3 there is coverage, this plan is feasible.

4           There's only two other findings, and I'll just go  
5 through them really quickly. One is a finding in Paragraph  
6 E, as in Earl, H as in Harold, in our objection, Your Honor,  
7 to the findings. I think we discussed this one in Paragraph  
8 -- I actually skipped over it. I think it was in Paragraph  
9 1, Your Honor. Yes, it is. We are perfectly with a finding  
10 that all parties, including the carriers, had notice of the  
11 filing of the Chapter 11 cases. We are not going to claim  
12 that we were ostriches that put our heads in the sand. It  
13 was all over the front page of every newspaper in the  
14 country. But whether as a result we had an opportunity  
15 participate or notice that the liabilities were being  
16 mediated, negotiated, and resolved, that's the sentence we  
17 propose to have stricken. It's really the same point. No,  
18 until the adversary was filed, I don't think the evidence  
19 will show any carrier who had any reason to think there was  
20 going to be any effort to get coverage here. And again, Ms.  
21 Grim may dispute that, but the evidence is not in front of  
22 you, and the briefing is not in front of you, and it can be  
23 resolved in the coverage (indiscernible).

24           The final provision, Your Honor, is I think in our  
25 objection covered by Paragraph 5. I'm skipping over the one

1 in Paragraph 4, Your Honor, which deals with Plan  
2 Confirmation Order JJB. The Debtors no longer seek that  
3 finding, so there is no reason we need to discuss it. But  
4 as to the last one, Paragraph NN, again, I don't know what  
5 we're arguing about. We do not deny that Section 524(e) of  
6 the Bankruptcy Code says what it says. We are not arguing  
7 it's unconstitutional. The discharge of a debtor does not  
8 discharge anyone else in their liability. No one is arguing  
9 that. What effect, if any, any release may have, whether we  
10 had notice of it or not, are things to be argued later.

11 Your Honor, I want to end, unless Your Honor has  
12 questions, where I started. We didn't have due process  
13 about these findings. We didn't have an opportunity to  
14 address them. We didn't have an opportunity to retain  
15 experts and the like. And more importantly, now there is no  
16 record before Your Honor on any of them and there is no  
17 reason why you need to reach them in a case where insurance  
18 coverage is not core to confirmation in which the adversary  
19 is before Your Honor, the arbitration will be stayed. And  
20 we will proceed on a full record with full briefing. And  
21 it's particularly inappropriate in a case where whatever  
22 coverage there is or isn't will not be outcome determinative  
23 in the feasibility of this bankruptcy, and the creditors  
24 overwhelmingly voted for the plan without any such findings  
25 and with the plan and with the neutrality language in 510

1       that the Debtors went out with and we are perfectly  
2       comfortable with.

3               So with that, Your Honor, I would be happy to  
4       address any issues Your Honor may have. I see you're  
5       flipping pages. If I can be of help, happy to do so.

6               THE COURT: Well, I guess I wanted to focus on the  
7       language in JJA and the third sentence. What's being  
8       referred to here is settlements of the opioid-related  
9       claims. It would seem to me that any insurer of an entity  
10      that has opioid-relate liability, including the D&O insurer,  
11      should be covered by this provision. And you're just  
12      confining your remarks to insurers of companies that don't  
13      have opioid-related liability, right?

14              MR. ANKER: Your Honor, you referred to the third  
15      sentence of JJA, and I see two sentences.

16              THE COURT: Well, the third clause. Maybe it's  
17      the third clause. You don't like the phrase, you want to  
18      strike the phrase, "Such negotiation, settlement, or  
19      resolution of liability shall not operate to excuse any  
20      insurer from its obligations under any insurance policy."

21              MR. ANKER: Correct, Your Honor.

22              THE COURT: Including any consent to settle or pay  
23      first provisions. And I want to set aside an insurer of a  
24      company that does not have opioid-related claims. I don't  
25      see why this sentence shouldn't have that language in it as

1 to every other insurer.

2 MR. ANKER: So by every other insurer I take it,  
3 Your Honor, you mean an insurer of Purdue, insurer of those  
4 Debtors who marketed --

5 THE COURT: Who have opioid-related claims.

6 MR. ANKER: Your Honor, there are insurance  
7 policies -- and again, I'm going to get a little bit over my  
8 skis here because I'm not a coverage lawyer. But insurance  
9 policies as a basic predicate have as a term of them dealing  
10 with the moral hazard. If you're going to ask me, the  
11 insurer, to pay, then you've got to bring me in. You can't  
12 settle without talking with me --

13 THE COURT: Right. But that law is different in  
14 bankruptcy cases. So I'm just trying to figure out -- I  
15 think your point was -- and you made it by focusing on  
16 Rhodes -- that how can a settlement be reasonable of opioid-  
17 related liability if it applies to a insured that doesn't  
18 have opioid-related liability. And there is some logic to  
19 that. But I don't understand the logic otherwise. I mean,  
20 the parties have briefed the bankruptcy issue otherwise. So  
21 I mean, I just --

22 MR. ANKER: Let me try to address the bankruptcy  
23 issue. Your Honor, I think 99 percent of the cases about  
24 whether bankruptcy law preempts -- my apologies Your Honor -  
25 - bankruptcy law preempts state law with respect to

1 insurance policies and contract rights deals with the  
2 transfer question. Really two questions. Can the transfer  
3 occur on the initiation of the bankruptcy from the  
4 prepetition debtor to the estate and (indiscernible)  
5 transfer later to the trust. That's the issue in Federal  
6 Mogul, the case Your Honor cited. And it in fact goes off  
7 on the language in 1123(a)(5) that addresses whether -- that  
8 specifically says a plan can provide for the transfer of  
9 rights.

10 There is not a lot of law, there is very little  
11 law on whether consent to settle provisions are or are not  
12 overwritten by the Bankruptcy Code. I would ask Your Honor  
13 to resolve that issue. I'm not asking you to rule my way,  
14 but I would ask you to let that issue be briefed with a  
15 record. I think you will find a record here that there was  
16 no effort to consult with the insurers. That's not what  
17 typically happens in bankruptcy. I can tell you or  
18 represent to you that I am in other bankruptcies where the  
19 debtors come to us and say here's what we're thinking of  
20 doing. What do you think? What are your views? How do you  
21 think about it? Would you consent to this? And that's not  
22 going to be the record here I think, but Your Honor doesn't  
23 know one way or the other. And I'd like to have an  
24 opportunity to full brief that issue with an opportunity to  
25 convince you that that's not what Federal Mogul stands for.

1 But neither the factual record nor the legal  
2 briefing is there. And again, I'm not asking by striking  
3 this language out. I want to be a hundred percent clear.  
4 And if you think language needs to be added to be neutral to  
5 make the point express, I don't have any objection to that.  
6 I am not arguing that by striking this language, you're  
7 implicitly ruling our way on the merits. I am simply, if I  
8 can use the colloquial expression, suggesting we kick the  
9 can down the road so that down the road there can be full  
10 briefing, and to the extent it matters, a factual record.

11 But, Your Honor, I'll just end on this. Federal  
12 Mogul and 99 percent of the cases, Combustion Engineering  
13 and others, are about the transfer question, not about  
14 whether a debtor can settle without -- not about provisions  
15 and policies -- not about anti-assignment provisions, but  
16 about -- they are about anti-assignment provisions, but  
17 they're not about provisions that require consent or at  
18 least consultation. And obviously lots of insurers' rights  
19 are fully preserved. Let's look at one that's going to be -  
20 - frankly may make all of this moot in the end of the day.

21 The policies overwhelmingly have products  
22 exclusions. They exclude any liability of a carrier to the  
23 extent that the insured, Purdue's liability arises out of  
24 its manufacture of a product. No one is arguing, including  
25 Ms. Grim or Mr. Singer, that somehow the Bankruptcy Code

1 overrides that. No one would argue that the Bankruptcy Code  
2 overrides limits, aggregate limits in policy. No one would  
3 --

4 THE COURT: All right. But I was really going to  
5 a different question. I can look at and will look at  
6 further the cases on consent or pay first, et cetera. I'm  
7 really focusing just on the point you made with regard to  
8 insureds that don't have opioid-related claimants.

9 I don't see how -- this is really a question for  
10 both of you. I don't see how a settlement with opioid-  
11 related claimants would affect one way or another an  
12 insurer's obligation with respect to a consent or pay first  
13 provision unless the insured -- I mean, I don't see how they  
14 could be claiming on that insurance policy to pay the opioid  
15 claims. By definition it seems to me that your Rhodes issue  
16 wouldn't come up.

17 MR. ANKER: Your Honor, the Debtors are seeking  
18 coverage from Rhodes. I think we're conflating multiple  
19 issues. So let me try to help divide them up in a way that  
20 may be helpful.

21 First, the Debtors are seeking coverage from  
22 Rhodes. Our position is that they are not entitled to that  
23 coverage, and the Court should not be making a  
24 reasonableness finding that affects Rhodes. That goes to  
25 reasonableness.

1 THE COURT: Well, are they looking for coverage  
2 for opioid-related claims?

3 MR. ANKER: I believe they are, Your Honor. I  
4 don't know that there are any opioid -- I mean, I don't know  
5 that there are any -- we actually looked at proofs of claim  
6 and could hardly find a proof of claim against Rhodes.

7 THE COURT: Okay.

8 MR. ANKER: But I do think in the adversary, they  
9 are seeking coverage under the Rhodes policy with respect to  
10 their settlements of opioid liability, including I think  
11 settlements by other debtors. And so we simply want to be  
12 able -- and this is one issue -- preserve as to Rhodes the  
13 ability to argue that whatever reasonableness there may be  
14 of the aggregate settlement, as to Rhodes there is no basis  
15 for there to be a claim for coverage. Because if it is  
16 contributing, it is doing so as a volunteer because it does  
17 not face opioid liability having not marketed opioids.  
18 That's one issue.

19 THE COURT: Again, this language just goes to  
20 opioid-related claimants. So I don't see how --

21 MR. ANKER: Yes. Your Honor, I confused you, and  
22 I apologize. When I was making the Rhodes point, it was the  
23 first part of this clause, the words "Viewed collectively".  
24 There's two different points going on here. One is why did  
25 we want to add the words "Viewed collectively"? Because we



1 don't want a finding that's specific to Rhodes. The  
2 strikeout on the second sentence --

3 THE COURT: Well, I don't think there is one. It  
4 says Debtors, plural.

5 MR. ANKER: If we have a clear record on that,  
6 Your Honor, and there's going to be no argument, we want it  
7 viewed collectively to be clear. But the (indiscernible) is  
8 going to be in front of Your Honor. Your Honor understands  
9 that that is about the Debtors -- Debtors, S, plural -- I  
10 can accept that.

11 The second sentence has nothing to do with the  
12 Rhodes issue. And I apologize, Your Honor. I evidently  
13 confused you. So --

14 THE COURT: Okay. So I don't think we need to  
15 cover the second sentence further, because now I understand  
16 where we are on this one.

17 MR. ANKER: Okay.

18 THE COURT: Okay.

19 MR. ANKER: Thank you, Your Honor. Are there are  
20 any other questions Your Honor has?

21 THE COURT: Well, I guess I want to go back to the  
22 first part, which is I have the proposed findings, I have  
23 the plan. I don't -- you expressed a concern that under the  
24 language of the plan, the Debtors could sneak something in  
25 besides what's in the proposed findings. And say, for

1 example, the coverage limits or the coverage exception is  
2 waived. I mean, I don't -- is that the concern? I mean, I  
3 think I have what is before me that they're actually  
4 seeking.

5 So, Your Honor, let me focus you on Section 510 of  
6 the current plan as opposed to the one that went out for  
7 solicitation.

8 THE COURT: Right.

9 MR. ANKER: It is very much like the one we have.  
10 But then it has a proviso. After saying nothing in the  
11 plan, the plan documents, or the confirmation order shall  
12 alter, supplement, change, decrease, or modify the terms of  
13 the Purdue insurance policies, including the MDT insurance  
14 policies. That's all that was in there when it went out to  
15 the creditors.

16 Now they've added the following, quadruple the  
17 number of words. "Provided that notwithstanding anything in  
18 the foregoing to the contrary, the enforceability and  
19 applicability of the terms, including conditions,  
20 limitations, and/or exclusions of the Purdue insurance  
21 policies, including the MDT insurance policies. And thus,  
22 the rights or obligations of any of the insurance companies,  
23 the Debtors, or the trust, including the Master Distribution  
24 Trust, arising out of or under any Purdue insurance policy,  
25 including any MDT insurance policy, whether before or after

1 the effective date, are subject to the Bankruptcy Code and  
2 applicable law, including any actions or obligations of  
3 Debtors thereunder. The terms of the plan and the plan  
4 documents, the confirmation order, including findings," --  
5 and they (indiscernible) -- "and any other ruling or order  
6 entered by the Bankruptcy Code.

7 So they have a proviso that says --

8 THE COURT: So -- so I understand that. So I  
9 think you are worried about the plan documents and any other  
10 orders or rulings, including in the future. Right?

11 MR. ANKER: And the past.

12 THE COURT: Okay.

13 MR. ANKER: Correct, Your Honor.

14 THE COURT: And I can understand that if, you  
15 know, the insurers didn't have notice of those issues. And  
16 maybe it should be dealt with that way. I'm not -- as far  
17 as I'm concerned, what they're asking me to find and rule on  
18 is what we're just been talking about for the last half hour  
19 or so. It's the proposed findings of fact and conclusions  
20 of law provisions that we've been discussing. And if they  
21 actually -- and I don't believe this is the case -- sought  
22 something from the Court that was not on notice to your  
23 clients, it couldn't be encompassed by that language because  
24 you wouldn't have notice of it. And if that's what needs to  
25 be clarified, it should be. I mean, I just don't -- that

1       should be an easy fix.

2               MR. ANKER: Your Honor, I think it is an easy fix  
3       if it's limited to the plan and the confirmation order. But  
4       let me -- what I'm looking at. First, I am concerned about  
5       the plan documents. I don't know what's going to be in  
6       them, when we're going to have an opportunity to look at  
7       them. But going back in time, it says under any order  
8       entered by the bankruptcy court without any temporary  
9       limitation, without any language about notice on us. That  
10       would include any order you entered at the outset of the  
11       case before the adversary --

12              THE COURT: I understand. But that has to be  
13       qualified by notice, obviously. I mean, Mr. Singer's point  
14       is insurers can't sit back and say everything that happens  
15       in a bankruptcy case on notice to us doesn't matter. You  
16       know, the normal rules of judicial estoppel, collateral  
17       estoppel, and law of the case just don't matter for  
18       insurers. That's just -- that's not right. But those  
19       principles all require notice. So that could be --

20              MR. ANKER: And, Your Honor, I think that can be  
21       fixed with a notice provision, adequate notice. I will say,  
22       Your Honor, there's a lot of law on whether findings in a  
23       contested matter are in fact res judicata for purposes of a  
24       future adversary. That's an issue we can brief with you  
25       later.

1 But I will say, Your Honor, let me go back to this  
2 provision for a moment. Why can't we have the language that  
3 was there when the plan went out that the creditors wrote it  
4 on? This is a last second change.

5 THE COURT: But it's not a last second change.  
6 You all have been able to blackline the proposed order, for  
7 example. I mean, you -- as you said, you and Ms. Grim and  
8 Mr. Singer have been living these issues in multiple cases.  
9 You know the caselaw. You know the issues. This is not  
10 really a surprise here. And if you just have that language,  
11 then you have the potential for the coverage exclusions.  
12 And I don't think that's right given the record as far as  
13 the transfer.

14 And I think, although I will double check the  
15 caselaw with regard to the pay first and consent points --

16 MR. ANKER: Your Honor, this is not a pay -- I  
17 want to make sure we're drawing issues --

18 THE COURT: I understand. But that's why I don't  
19 think it really matters. And, frankly, I don't think the  
20 consent really matters, either. I mean, to me, if the  
21 claims are being settled, they will only be settled in this  
22 context. They will be settled for a lot worse in some other  
23 context. So what -- the deletion of this language would  
24 mean that the insurers could go -- could raise this whole  
25 issue, that we've had six days of trial and two days of oral

1 argument on as to whether the settlement is proper or not  
2 all over again. That just doesn't make sense.

3 MR. ANKER: Your Honor --

4 THE COURT: And I think the underlying principle  
5 is right, that in bankruptcy it's a collective proceeding.  
6 The insurers' rights are to object on the context of the  
7 collective proceeding. And if they really believed that  
8 these settlements were on their backs properly or  
9 improperly, they would have objected. They would have  
10 raised their voice. And they've just not.

11 MR. ANKER: So, Your Honor --

12 THE COURT: I mean, their issues are much more  
13 narrow, primarily. They're basically saying we didn't cover  
14 this sort of stuff. And the settlement doesn't say they  
15 did. This is not a -- this is very different from a case  
16 where they're asking for a finding that there's X degree of  
17 insurance coverage that actually applies to these claims.  
18 They're not seeking that relief. They just want to prevent  
19 settlements that if I approve them, I will find are  
20 reasonable on notice to the insurers, the insurers coming  
21 back and saying no, we have to relitigate that whole thing.  
22 And to me that just is not right.

23 MR. ANKER: I understand Your Honor's position.

24 Do I understand correctly that either we'll have the words  
25 "viewed collectively" added or at as clear to Your Honor

1       that this is not specific to -- is not a finding with  
2       respect to Rhodes --

3               THE COURT:   It's to all the debtors.   It says  
4       debtors, plural.

5               MR. ANKER:   That's correct.

6               THE COURT:   We're not allocating, you know, X to  
7       one debtor and Y to another.   But at the same time, I don't  
8       -- I think that the language that insurers have proposed be  
9       stricken really should stay, because it's -- I think under  
10      these circumstances, isn't a settlement that is being  
11      proposed to be funded primarily by the insurers.   In fact,  
12      the evidence suggests -- Mr. Huebner's presentation today  
13      was exclusive of insurance.   So that was on top.   And so I  
14      think all things considered, I understand why the insurers  
15      haven't objected, because to them it's -- it actually  
16      ensures that, frankly, as much money as possible goes out to  
17      reduce their potential liability.

18              MR. ANKER:   Your Honor, so I take it you believe  
19      the language should remain in Paragraph JJA.   Does Your  
20      Honor have any questions about any of the other provisions  
21      that are --

22              THE COURT:   Well, I don't really agree with them.  
23      I just think, again, I think there should be a reference to  
24      the withdrawal of the objections.   That's fine.   I think  
25      that's an important aspect of the record.   And that may well

1 help you in your concern about precedent, although I don't  
2 think what we're dealing with here involves insurance of  
3 non-debtors being used to pay debtor obligations. But I  
4 think the objection should be noted and the withdrawal of  
5 objections and the lack of objections by any others.

6 MR. ANKER: Thank you, Your Honor.

7 THE COURT: Okay. Okay. And as far as the  
8 language in the plan itself, I mean, I think I've been  
9 clear. If the Debtors or the MDT try to alter the insurers'  
10 rights other than as set forth in the findings of fact or in  
11 the confirmation order itself or in the plan documents that  
12 you have, without due notice, you just can't -- that's not  
13 operative. That can't be operative.

14 MR. ANKER: Thank you, Your Honor.

15 THE COURT: I don't know how you word that. I  
16 imagine you'll probably come up with some language to cover  
17 that. But it's basically a fundamental principle. So even  
18 if you can't in the next day or so come up with that  
19 language, I think the record is clear that, you know, you  
20 can't have super-secret probation.

21 MR. ANKER: Thank you, Your Honor.

22 THE COURT: Okay. Okay. Thank all three of you.  
23 I do, that is.

24 MS. GRIM: Your Honor, may I have the opportunity  
25 to address a few of Mr. Anker's points?



1 THE COURT: Sure. I'm sorry. Go ahead.

2 MS. GRIM: On Mr. Anker's point as to why are we  
3 here, I just want to reiterate I think we've made it pretty  
4 clear that we're here because the insurers have made it  
5 clear that they seek to negate coverage solely based on the  
6 plan. And even if Mr. Anker agrees not to object to any  
7 aspect of the plan, that we need these findings to preserve  
8 the value of the MDT insurance rights.

9 Mr. Anker is correct and we agree, the recovery of  
10 proceeds is not a predicate to confirmation, but transfer of  
11 the insurance rights is a predicate. And the MDT's ability  
12 to access those rights without having the transfer itself or  
13 any other aspects of the plan vitiates coverage is also a  
14 predicate. And 1123(a)(5) preempts any policy provisions  
15 that may impede the Debtor's ability to implement this plan.

16 I also need to address Mr. Anker's suggestion that  
17 our firm, Gilbert, is seeking confirmation findings solely  
18 for precedent in other cases. Because, frankly --

19 THE COURT: Well, it wouldn't work anyways. So  
20 that's fine.

21 But I just want to -- again, can I go back to  
22 something? I am not aware of any other provision of the  
23 plan that -- other than what we've been talking about today,  
24 that affects the insurers' rights. Is there any? I'm not  
25 aware of any.

1 MS. GRIM: No, Your Honor. And I know certain  
2 insurers raised some concerns regarding -- I believe it was  
3 the definition of the MDT insurance rights or the schedule  
4 that listed certain policies that fall within that  
5 definition. We want to make clear the plan is not  
6 presupposing that those policies provide coverage for the  
7 opioid liabilities. You know, if any of these provisions  
8 give Mr. Anker heartburn, I think he's had a number of weeks  
9 now to raise them. We have addressed other concerns by  
10 other objecting insurers to clarify language, that we're not  
11 trying to do that.

12 So I think what you see is what you get here. We  
13 are seeking the findings that we are seeking.

14 THE COURT: All right.

15 MS. GRIM: And that's it.

16 THE COURT: Okay. All right. Thank you.

17 MS. GRIM: I do think it's important, if I could  
18 just have two minutes to address his due process arguments.  
19 And I don't want to drag this out, but I do think it's  
20 important to correct the record on this. We've had numerous  
21 conversations about the scope and intent of this provision,  
22 starting back on May 9th. The Ad Hoc Committee and the  
23 Debtors made clear from the get-go even with the old  
24 language that the intent was to preserve the same rights and  
25 obligations the insurers and debtors had under the policies

1       prepetition, but not to permit the insurers to limit or  
2       escape their coverage obligations based on any aspects of  
3       the plan for the Chapter 11 process. The insurers expressed  
4       a contrary view, and that's why revised the provision to  
5       begin with. So I think it's a little bit of a stretch to  
6       say that they were taken off guard. But even if they were -  
7       - and I'm not going to beat a dead horse on this because I  
8       think Your Honor made the point effectively -- what exactly  
9       have the insurers been deprived of? They've had the  
10      opportunity to object to the plan, to the confirmation  
11      order. We are here right now. They had the opportunity  
12      cross-examine witnesses during trial last week. And so any  
13      due process confers here being unfounded. And in fact, I  
14      believe we provided these confirmation order findings back  
15      on August 11th, which might have been before the Court even  
16      had them, although Debtor counsel can correct me on that.  
17      So, again, I just need to correct the record on that point.

18               Again, if Your Honor has any specific questions on  
19      the particular findings that were not already addressed, I'm  
20      happy to address those. But otherwise, I'll --

21               THE COURT: I don't think I do. I think you've  
22      gone through them.

23               MR. ANKER: Your Honor, this is Mr. Anker. I'm  
24      not going to reargue anything. I will say I assume that --  
25      I note Your Honor is talking about working on language in

1 the next two days. I think we heard you loud and clear  
2 about the notice points and other points. I assume and will  
3 request that the Debtors furnish us with a copy of any  
4 revised confirmation order and plan documents so we can see  
5 them. And not formally settling the order, but so that we  
6 can see them and give our comments.

7 THE COURT: Absolutely. That's fine.

8 MR. ANKER: Thank you, Your Honor.

9 THE COURT: But again, as far as these proposed  
10 findings are concerned, except for the references to the  
11 withdrawal of the objection and there being no other  
12 objections and just the record being clear, the Debtors  
13 means Debtors, plural. I am actually comfortable with the  
14 language as proposed by the Debtors here. And that includes  
15 the release point, which is really tied into the settlement  
16 point which we discussed for a while.

17 MR. ANKER: Thank you, Your Honor.

18 THE COURT: Okay. All right.

19 The next thing for oral argument is time that I  
20 asked be reserved for the people who filed pro se objections  
21 to the plan, i.e. people who were not represented by lawyers  
22 who filed a timely objection to the plan. And I think two  
23 of those people have, as I understand from my clerks, either  
24 signed up for the Zoom for Government feed to address their  
25 objection or at least been given the information to do that

1 because of an earlier request to speak.

2 So the Debtors at this point don't have anyone to  
3 speak first. I think they reserve their rights to respond.  
4 But I am happy to hear from the individuals who did want to  
5 speak who filed a timely objection.

6 And I have down on my list Ms. McGaha. I hope I  
7 am pronouncing that right. I see you there. And you can go  
8 ahead, ma'am. I want to assure you and the other pro se  
9 objectors, even if they've not signed up to speak, that I  
10 have reviewed each of the plan objections. And actually,  
11 there were some statements by claimant that were not  
12 expressly couched as an objection, but they were riled  
13 around the time before the -- around and before the deadline  
14 for objecting to the plan. And I think actually Ms.  
15 McGaha's filing was one of those. But I was treating it as  
16 a plan objection. So I am happy to hear from you, ma'am.

17 MS. MCGAHA: Thank you, Your Honor. Before I --  
18 my name is Carrie McGaha.

19 THE COURT: McGaha, okay.

20 MS. MCGAHA: McGaha.

21 THE COURT: Thank you. Okay.

22 MS. MCGAHA: You are not alone in mis pronouncing.  
23 Before I begin, I would like to ask a couple questions, if I  
24 may.

25 THE COURT: Okay.

1 MS. MCGAHA: I was confused on the voting. I've  
2 heard you all talk about it. And I was kind of under the --  
3 it sounded to me -- now, I'm not a lawyer. I don't know if  
4 this is all like -- plus, I have a damaged mind from all the  
5 opiates I took, and I process information kind of like sand  
6 through a colander. And so -- but when I was reading the  
7 voting and the ballot, it seemed like if I voted no, I was  
8 kind of relinquishing some of my claim amount. Like I was  
9 almost ready to vote yes just to --

10 THE COURT: No.

11 MS. MCGAHA: And so I don't know if anyone else  
12 had that understanding, but --

13 THE COURT: No one has raised that point. And I  
14 think the ballot materials were clear. The vote was just a  
15 vote on the plan. It had nothing to do with whether your  
16 claim would be allowed or not.

17 MS. MCGAHA: Okay, thank you. Also, my broad  
18 understanding of this plan is that the new company will be  
19 able to -- is going to continue the sale of OxyContin and  
20 partial opiates, opiate antagonists, and other drugs in  
21 order to fund abatement. Is that an improper understanding?

22 THE COURT: Well, it depends what you mean by the  
23 word continue. It will be under a very strict set of  
24 operating guidelines in the form of an injunction. It will  
25 have, as it has had during the whole course of this case, a

1 monitor. The first monitor I think is now the Health and  
2 Human Services Secretary. People of statute. It will have  
3 governance by representatives of, you know, the Claimants.

4 So your answer is -- again, depends on how you  
5 define the word continuing. I think it's quite clear -- and  
6 the Debtors already have represented and the monitors have I  
7 think made this clear -- that whatever marketing practices  
8 that Purdue had that have been alleged to have flooded the  
9 country with opioids, of just its opioids, will not -- has  
10 not and will not be occurring, that the salesforce doesn't  
11 exist. There is no salesforce.

12 So if you've been listening to the trial over the  
13 last week or so, there is a balance for a regulated company  
14 like this that sells products that are inherently dangerous  
15 where nevertheless the regulators contend that they agree  
16 that they are not prohibited and can be used for proper  
17 purposes.

18 So it's not going to stop selling opioids, but it  
19 will not be selling them in a way that existed at least  
20 through the period that it was marketing them with the  
21 salesforce and trying to drive up prescriptions, et cetera.

22 MS. MCGAHA: Okay. Thank you. I appreciate the  
23 previous speakers and yourself for giving me an intro into  
24 what I feel like I need to say. I don't have a script  
25 written here. I'm just going to try to pray that the whole

1 experience speaks for me and anoints my words. Because this  
2 is all very confusing.

3 But who am I? I am someone who has had --  
4 apparently I am the only one on this list that's willing to  
5 speak to you today who has been through this. But I feel  
6 like I have relevant life experience with this. Because I  
7 did work around, as I have indicated in my submissions,  
8 drugs, you know, a lifetime ago. And I've never been in  
9 trouble with the law. I never did anything, you know,  
10 illegal and all that kind of stuff while I was working. But  
11 way back in the eighties, you know, somehow people didn't  
12 need long-acting opiates to get their relief from pain. And  
13 when the Oxycontin was introduced by Purdue onto the market  
14 and then pushed out by the doctors -- who I also hold highly  
15 responsible, because one can't function without the other.  
16 That having taken these drugs for over 15 years and  
17 survived, those long-acting opiates act completely different  
18 than short-acting opiates.

19 And I know that there's a lot of testimony  
20 concerning the diversion, that that's why they formulated  
21 OxyContin the way they did, to prevent diversion, and it's  
22 not 100 percent -- or however they adulterate it or  
23 whatever. I don't know.

24 I don't have a lot of experience with the illegal,  
25 incarcerated, all that kind of stuff, but having taken those



1 drugs, when you're taking those long-acting drugs for  
2 chronic pain -- and I'm not talking about acute pain -- I  
3 think that these drugs are miracles to help people with  
4 acute pain. But these long-acting drugs, they take away  
5 your individual ability to kind of manage your own pain.

6 You know, used to it was as-needed for pain. Once  
7 you get over that, you know, three to -- three days to 10  
8 days of post-op or whatever the injury, or whatever it is,  
9 and you kind of start to heal. You know, you should be  
10 decreasing the usage, and your pain should lessen.

11 And what they did to me was they just kind of --  
12 and then they -- the doctors still give you the breakthrough  
13 pain pills, and so either way you're getting a long acting  
14 drug that's supposed to prevent you from abusing it, but  
15 then they still give you the short-acting drugs to help with  
16 the breakthrough pain because every time you take them and  
17 if you're on a constant level, your tolerance is constantly  
18 building up, and so you're just always building up this  
19 tolerance to the drug, and your tolerance to the pain goes  
20 way, way down.

21 And so it's a vicious snowball of psychic hell  
22 that happens on these drugs. And as a patient who still  
23 suffers from chronic pain, but the Lord really helped me in  
24 dealing with it, the -- see, this is the sand going through  
25 the colander. I just lost my thought, but I do have a few

1 notes here.

2 It's the risk of reinjury. That's what I was  
3 going to say. When you're taking those drugs just constant  
4 long term, especially for chronic pain that you really need  
5 to address in non-pharmaceutical ways if possible, which I  
6 think the introduction of these drugs pushed like they were  
7 onto the market prevented a lot of development of the  
8 alternatives that, you know, could've been really developed  
9 over the past 20 years rather than just relying on all these  
10 opiates and then, you know, we're in the situation that  
11 we're in.

12 But when you take opiates for pain and injury,  
13 like I have a really bad back, and so it does take away that  
14 (indiscernible) of the pain, and so you think you can do  
15 stuff that you really shouldn't do it. You know, you are  
16 feeling less pain. It's really not that -- I never felt no  
17 pain unless I was unconscious, but your pain is -- whatever  
18 happens to you, you do -- you do more than you really should  
19 do. You don't allow yourself to heal so that you -- and you  
20 know, eventually heal fully, and I'm going on and on.

21 THE COURT: No, no. I think I understand your  
22 point.

23 MS. MCGAHA: Okay. I'm sorry. I'm going to try  
24 to keep this short because I don't want to cost anyone --

25 THE COURT: That's fine.

1 MS. MCGAHA: -- any more money than necessary.  
2 You guys get paid beaucoups of money, so I don't want to  
3 take away from --

4 THE COURT: Well, I don't get paid by the hour, so  
5 you can go ahead.

6 MS. MCGAHA: Okay. I think it delays healing,  
7 anyway, the OxyContin especially.

8 I feel like the way that that was approved by the  
9 FDA and all of the experts that have -- not all but a lot of  
10 experts that approved these -- that regulate and approve  
11 these decisions, I -- I mean, I just really kind of -- I  
12 don't understand it because OxyContin -- no one should  
13 really need constant opiate of OxyContin if they're still  
14 going to get the short-acting drugs. I mean, it just  
15 doesn't make sense to me.

16 But I think I tried to make that point in my  
17 submission also, that there's a symbiotic relationship  
18 between the healthcare system and the pharmaceutical  
19 industry. And it's like hand in glove, and the -- all these  
20 people out here would not have been prescribed these drugs  
21 if the doctors hadn't have been, you know, benefiting  
22 somehow.

23 And that, I feel like, is kind of a missing link  
24 or whatever in this plan is that it -- I know this is a  
25 pharmaceutical bankruptcy and all this kind of stuff, and I

1 just hope that whoever, you know, the state leaders or  
2 whoever gets to introduce the solutions or decide how the  
3 money's spent in each state remembers that people out here  
4 like myself in, you know, Podunk USA where you have to drive  
5 an hour just to get, you know, anywhere, and if you want to  
6 go to a good -- a really good doctor, you're going to drive  
7 three hours.

8 And so a lot of the solutions that I've outlined  
9 in my submissions are alternatives that I personally have  
10 been trying to use some of them on my own, but if they'd  
11 have been more available, you know, years ago, if this had  
12 not been offered as a solution, I would not have gone out on  
13 the street and looked for illegal drugs to ease my pain.

14 I would've had to -- I mean, I was the type of  
15 person -- I would've done what I -- you know, what the  
16 doctor recommended, and I relied on those doctors to put my  
17 best interests at heart and to, you know, follow their  
18 Hippocratic Oath and not just get the country addicted to  
19 opiates like that's the only solution.

20 I mean, you've got these task forces who know all  
21 of this. All these doctors, they know this. But down here  
22 in these -- you know, out here in no man's land, it's a  
23 different world, and the way that they're doing the funding  
24 of the abatement programs, you know, and a lot of this, it  
25 is based on population and the MMEs.

1           And I fear that there's just going to be these  
2           huge bureaucracies of these agencies who are going to -- you  
3           know, it's all going to funnel through. And by the time it  
4           gets down on the ground to the people that really need it,  
5           there's not going to be very much left, and I know there's  
6           all sorts of formulas that they go by and everything, and  
7           that's kind of necessary. But from where I'm standing,  
8           that's just what I see, and that's what happens in rural  
9           areas.

10           The drug-induced decline that we experienced over  
11           the years, you know, people leave. And they go to nice  
12           areas, the big city where, you know, those places, their  
13           population grows, and they get more money, and people leave  
14           here because, you know, less money. And so it's just kind  
15           of -- the problem gets bigger, and it's all because of the  
16           drugs. And --

17           THE COURT: Okay.

18           MS. MCGAHA: I just wanted to say also that on the  
19           unit dose thing, I tried to describe how that would've  
20           helped me, and I feel like if they're going to continue to  
21           sell especially OxyContin -- but I feel like all narcotics  
22           should be in like a card.

23           I don't know if you're familiar with Accutane, but  
24           it's a drug, and it's sold on a card so the you can see,  
25           okay, I took that. You don't want to overdo it. You know,

1 or birth control pills. You can see when you took it and,  
2 you know, how many you took.

3 And that was one of my problems because for a long  
4 time, I was on fentanyl patches. I had 100 microgram  
5 fentanyl patch every 48 hours, and I was taking 120 Dilaudid  
6 a month along with it, and it went on for years. And it was  
7 either fentanyl or OxyContin along with the Dilaudid or  
8 other drugs.

9 And so the doctors that prescribe these and the  
10 doctors that are in the Sackler family and executives with  
11 the pharmaceutical company, you know, they're uniquely  
12 trained and credentialed to know the pharmacology and the  
13 human anatomy and how all this kind of interacts. And you  
14 know, they should've known the history of opium in this  
15 country and, you know, for hundreds of years, the addiction  
16 that can happen from it.

17 But the side effects, you know, you get memory  
18 loss and confusion, and then you combine that with Valium or  
19 whatever, and it's just even worse. And so I can just  
20 remember, I mean, you're looking down the barrel of a bottle  
21 of pills, and you can't tell how many are in there, and  
22 you're in pain. You're suffering and you're vulnerable, and  
23 you know, we're depending on the doctor to not give us  
24 something that really is going to harm us.

25 But when you're in that situation, and I was the

1       only one that could manage my drugs. I was like the  
2       healthcare drug expert in my family. And you know, I didn't  
3       do a very good job. There was never a time that I ever  
4       diverted my drugs or mis -- abused my drugs or did anything  
5       like that, but there were times that I made my mistakes, and  
6       one of those times caused me to almost die, and my children  
7       found me. And you know, they were traumatized by that, and  
8       you know, they probably should've filed a claim for all of  
9       the trauma that they went through, but that's beside the  
10      point.

11               But the diversion that the Sacklers talk about  
12      when they testified, like that's the biggest problem, which  
13      I get that that is a big problem in this country. In fact,  
14      before I even filed this claim, I had written letters to my  
15      governor, and the attorney general, and my local sheriff  
16      kind of similar to the things that I've written in my  
17      submissions because I felt like the -- that's what I felt  
18      like God was trying to tell me what to do.

19               But they kept talking about diversion. In this  
20      case, you're only going to get paid money as a personal  
21      injury person if you have proof, you know, medical records  
22      and pharmacy records that you actually took these drugs,  
23      from my understanding of it.

24               And so -- but it seems like all of these abatement  
25      programs and a lot of the talk that the Sacklers had was all

1 about diversion, and they kept mentioning, you know, heroin  
2 was on the rise anyway, and kind of like it was inevitable  
3 that opiates were going to be a crisis, and if they knew  
4 heroin was already on the rise, why they thought introducing  
5 OxyContin and pushing all these drugs out onto the market  
6 would be a great solution, I don't know.

7 I think that's negligence, and I think not putting  
8 those drugs, knowing the side effects of those drugs on the  
9 patients taking them and expecting those people to manage  
10 the consumption of those drugs -- when you go in the  
11 hospital, you know, the nurses chart every pill. They count  
12 every pill. They keep up with every pill like it's some  
13 kind of piece of gold or something. But if you're a  
14 patient, you're supposed to manage all this on your own  
15 while you're suffering, and suffering the side effects? It  
16 just seems like negligence to me.

17 And the quantities were just outrageous. And I've  
18 had multiple surgeries over my lifetime, and I do know what  
19 -- the quantities and how drugs were prescribed in the '80s,  
20 and somehow people managed to recover from surgery, and  
21 recovery from injury, and recover from all sorts of things  
22 without being -- having it necessary to be put on long-  
23 acting opiates. And that's my biggest concern --

24 THE COURT: Right.

25 MS. MCGAHA: -- is (indiscernible).



1 THE COURT: I hate to do this, Ms. McGaha, but I  
2 think -- I read your objection. I think we're now circling  
3 back to things we've already discussed, and --

4 MS. MCGAHA: Okay.

5 THE COURT: -- you discussed them quite clearly,  
6 so I'm going to --

7 MS. MCGAHA: Okay.

8 THE COURT: -- thank you.

9 I want to make two observations. First, the  
10 abatement programs under this plan are not locked in stone,  
11 except for the fact that the money has to be used for  
12 abatement, so my hope is -- and I believe this is the hope  
13 of the states, and local governments, and hospitals that had  
14 a hand in putting together these abatement and treatment  
15 programs is that people learn as they go along, and part of  
16 the learning is going to come from the reports that have to  
17 be filed in this case as to effectiveness of treatment and  
18 the effectiveness of the abatement programs, how to do this  
19 best.

20 And I think -- it is clear to me at least that  
21 this -- that that task is a complicated one, but it includes  
22 the ability of people like yourself, people who run  
23 community groups, who run associations of both people who  
24 themselves have suffered from opioid use disorder and their  
25 relatives to have input, to speak to their councilmen, their

1 mayor, their governor, and the local health authorities, to  
2 give them their input. And I think that's important,  
3 obviously.

4 So this is not -- you know, I think this money is  
5 to come in over a substantial amount of time, and it is not  
6 going to -- if I confirm the plan -- always going to be a  
7 2021 abatement program. We'll learn from it, and so your  
8 observations are important there.

9 MS. MCGAHA: Thank you, Your Honor. I appreciate  
10 the opportunity to voice my concerns and speak to the Court,  
11 and I really appreciate all your time and effort.

12 THE COURT: Okay. Thank you.

13 All right. I don't know if -- I just have on my  
14 list Ms. McGaha, but I don't know if anyone else who filed a  
15 timely objection as a pro se wants to speak. Otherwise, I  
16 guess I'll hear from the Debtor's counsel.

17 Okay. Oh, I think there is one other person. Ms.  
18 Eck?

19 MS. ECKE: Yes. Judge Drain, please, please  
20 forgive the unmuting, the untimely unmuting of my computer.

21 THE COURT: Oh, that was -- that's --

22 MS. ECKE: And the --

23 THE COURT: That's fine, ma'am. That was for like  
24 one tenth of a second, and I'm sure Mr. Singer has  
25 experienced much worse over the pandemic on various Zoom

1 calls that he was on, including probably dogs and children  
2 and all sorts of things, so don't worry about that.

3 MS. ECKE: Thank you. Anyway, I'm going to --

4 THE COURT: And Ms. Eck, I don't know if you want  
5 -- if you want to be on the screen. You don't have to be,  
6 but I'm not able to see you. If you don't want to be on the  
7 screen, that's fine.

8 MS. ECKE: It's okay. I just don't know how to do  
9 it.

10 THE COURT: Oh, okay.

11 MS. ECKE: Any way.

12 THE COURT: The person who's running this in the  
13 courtroom -- my tech person says your camera is actually  
14 covered by something.

15 MS. ECKE: Oh. Oh, oh, oh. I got it. That's  
16 still not -- that's the lights above.

17 THE COURT: Yeah. It has to be pointed --

18 MS. ECKE: It's not helping.

19 THE COURT: Anyway, it's all right.

20 MS. ECKE: Okay. Anyway, my objection to the  
21 restructuring of Purdue Pharma LP et al, case number 19-  
22 23649.

23 Dear Judge Drain, I began researching OxyContin,  
24 and its generative derivatives as my son prescribe -- my  
25 son's doctor prescribed this to him at an early age. After

1 my dearest firstborn died December 17th, 2015, nine days  
2 after my birthday on December 8th, and nine days bore my  
3 poor, deaf, Vietnam veteran's ex-husband's birthday on  
4 December 26th in 2015, I was immediately awoken to learn  
5 about this overprescribed drug.

6 At first when I started to -- trying to write a  
7 motion for claim payment in early November of 2020, I  
8 spilled out my heart to all the following individuals in  
9 this instance. This was an extreme, extreme tragedy, as  
10 many of the attorneys, including Marshall Huebner of Davis  
11 Polk & Wardwell; Layn Phillips of Corona Del Mar,  
12 California; Kenneth Feinberg of Washington DC, and many  
13 others, including Ryan Hampton, Blue Cross Blue Shield  
14 Association, CVS Caremark Part D Services LLC; and Health  
15 LLC; Cheryl Juaire, T -- L-S --LTS Lohmann Therapy Systems  
16 Corporation, Pension Benefit Guaranty Corporation, Walter  
17 Lee Salmons, Kara Trainor, West Boca Medical Center; the  
18 official committee of unsecured creditors, care of Akin Gump  
19 Strauss Hauer & Feld LLP; Bank of America Tower, One Bryant  
20 Park, New York, New York 10036.

21 Attention Attorney Edan Lisovicz and Attorney Arik  
22 Preis who are in my letter dated December 13th, 2020. My  
23 letter to Judge Drain July 30th, 2020 you can read in full  
24 online. Please also view my motion for claim payment dated  
25 December 15th, 2020.

1 Previously, I had begged the Attorney General of  
2 Connecticut, George Jepsen, presiding attorney general for  
3 Connecticut from 2011 to 2019 for help for the mothers of  
4 Connecticut who had lost their children due to this crisis.  
5 I had also contacted the Connecticut Department of Health  
6 previously and received no help from anyone -- or from  
7 anyone personally or for my group of bereaved mothers.

8 Gloria (indiscernible), head of Consumer Affairs  
9 for Attorney George Jepsen of Connecticut who was in office  
10 from 2011 to 2019 and Sandra Arenas, the new head of  
11 Consumer Affairs for Attorney George -- Attorney General  
12 William Tong of Connecticut from January 1st, 2019 had  
13 already told me that the state only sues for the state, not  
14 for the individuals.

15 At this point in my life, I feel in my opinion  
16 that I have been used and abused by the state of  
17 Connecticut. I was born in the great country of America and  
18 always thought that I would receive help if I asked for it.  
19 I'm really hurt by everyone's indifference to my personal  
20 tragedy and the personal tragedies of many others.

21 Attorney James I. McClammy of Davis, Polk &  
22 Wardwell, the attorneys who are defending Purdue Pharma LP's  
23 actions first contacted me via e-mail, later by Jacquelyn  
24 Knudson of Davis Polk & Wardwell on December 3rd, 2020 via  
25 telephone. Then I called Attorney Knudson on December 7th,

1       2020. Attorney James I. McClammy wrote a letter dated  
2       December 8th, 2020 and mail it to me December 9th, 2020  
3       stating that I had talked to Attorney Knudson on December  
4       7th, 2020.

5               My previous letter to you, Judge Drain, was dated  
6       December 15th, 2020. That was my motion for claim payment.  
7       On February 24th, 2019, there was a segment on television of  
8       60 Minutes entitled "Did the FDA Ignite the Opioid Epidemic?  
9       A drug manufacturer Denounces his own industry and explains  
10      to 60 minutes how a label change by the FDA expanded the use  
11      of opioids" in which correspondent Bill Whitaker talks to Ed  
12      Thompson, a Pennsylvania drug manufactures -- manufacturer  
13      who tells about his lawsuit of the FDA at the beginning of  
14      the OxyContin crisis.

15             60 Minutes had to petition the courts of West  
16      Virginia to get the information to issue this segment of the  
17      television program since according to 60 Minutes, the drug  
18      manufacturers and the FDA were holding secret meetings about  
19      the labeling of the drug.

20             Ed Thompson states that OxyContin was on the  
21      market since 1990, and the FDA new how potent the drug was.  
22      Ed Thompson explains how a high-dose long-duration opioid  
23      kills people when there was no scientific evidence to  
24      condone long-term use of opioids. Ed Thompson had stopped  
25      the high-potency, high-dose drugs that he manufactured in

1 1962.

2 Therefore, in my opinion, I don't agree with the  
3 declaration of Jonathan Greville White on page 4, Article 9,  
4 which states "Beacon Trust, one of the general trusts is the  
5 ultimate owner of the 50 percent limited partner Purdue  
6 Pharma LP, Purdue, which holds for the benefit of Side A an  
7 entity for the benefit of Raymond Sackler or Side B is the  
8 ultimate owner of the blankie of the Purdue equity.

9 "Beacon Trust was settled in 1993 by Mortimer D.  
10 Sackler, several years before OxyContin was launched. I am  
11 the director of Heathridge Trust Company Limited, which is a  
12 trustee of the Beacon Trust Company Limited, which is a  
13 trustee of the Beacon Trust.

14 "Since the death of Mortimer D. Sackler in 2019,  
15 the Beacon Trust has been an irrevocable trust of the  
16 benefit of Theresa Sackler, Dr. Mortimer D. Sackler's issue,  
17 and various charitable beneficiaries. The Beacon Trust  
18 instrument provides that its trustee holds the Beacon Trust  
19 funds in its discretion with prior written consent of the  
20 special trustees to pay income and/or capital to or for the  
21 benefit of one or more Dr. Mortimer D. Sackler's spouse,  
22 defendants, and/or charitable foundations."

23 Later, Jonathan Greville White states, "Each of  
24 these general trusts is an irrevocable discretionary trust.  
25 Their beneficiaries are typically to the Sackler, and the

1 issue of Dr. Mortimer D. Sackler. One general trust confers  
2 upon Theresa Sackler a life interest over the income that is  
3 generated each year."

4 According to LexisNexis and the Bloomberg Law on  
5 December 17th, 2019 at 6:09 p.m., Samantha Stokes wrote,  
6 "Purdue Pharma has paid several big law firms for the legal  
7 work on behalf of the Sackler family members, including  
8 Debevoise, McDermott and Norton Rose, according to new  
9 documents" and "Purdue Pharma, the embattled pharmaceutical  
10 company at the center of the opioid crisis has paid more  
11 than 17.5 million in legal fees on behalf of the Sackler  
12 family to more than a dozen law firms, according to the new  
13 documents filed in the company's bankruptcy. Debevoise &  
14 Plimpton was paid the majority of the legal spend, more than  
15 11.4 million for its legal work for the Sacklers from the  
16 first half of 2018 through 2018 through early 2019 according  
17 to an audit filed Monday in the U.S. Bankruptcy Court in the  
18 Southern District of New York where the company is  
19 undergoing Chapter 11 restructuring."

20 If the Sackler family used the money that they  
21 spent on attorneys instead of for themselves -- instead of  
22 themselves, all parties would be happier.

23 As far as my understanding from Arik Preis,  
24 partner at Akin Gump who called me at 6:30 p.m. on July  
25 30th, 2021 after I sent my original July 30th letter off and



1 will object if I give you actual numbers for our  
2 conversation dated Friday, July 30th, 2021, there are four  
3 main sides of this restructuring equation, one consisting of  
4 the official committee of unsecured creditors and all the  
5 others in my previous letter dated December 13th, 2020;  
6 another side consisting of a few brave pro se advocates and  
7 me who are supposedly supposed to get virtually nothing; an  
8 additional side of states with attorney generals,  
9 municipalities, and an abundance of lawyers handling Chapter  
10 11 in case number 19-234649, getting the majority of at  
11 least three quarters of the funds, which may or may not help  
12 injured victims directly from an 18-year trust. And  
13 finally, the fourth side consisting of the Sackler family  
14 who is trying to use their ill-gotten fortune off the backs  
15 of heartbroken people who lost their loved ones.

16 On July 19, 2021, Attorney William -- Attorney  
17 General William Hong filed objections to, "Bankruptcy plan  
18 with legal shields for the Sackler family." Therefore, I'm  
19 asking the Honorable Judge Drain for Rule number 3008-1,  
20 reconsideration of claims. We need to object to the  
21 restructuring of Perdue Pharma and initiate an entirely new  
22 vote for the mothers, fathers, brothers, sisters, and all  
23 who are now living a life of heartache, depression, and  
24 loneliness from this drug that had been evaluated years  
25 earlier by the Perdue Corporation and hidden from the public

1       that highly addictive and shoved under the proverbial rug.

2               Are the Sacklers and their lawyers at Davis Polk  
3       and Wardwell willing to clone my dear son or bring him back  
4       to help me in my disabled old feeble age? I don't think so.  
5       thank you, Your Honor.

6               THE COURT: All right. And thank you, Ms. Ecke.  
7       I will say just one point, and that is that it obviously  
8       took a lot of courage to say what you've said in this  
9       setting. I some people will disagree with it, and I think  
10      there are some points that just weren't right like Davis  
11      Polk being the Sacklers' lawyers, which is not true. But on  
12      the other hand, what comes through very clearly is I think  
13      the main point of your objection and your statement, which  
14      is that this company's product or products caused tremendous  
15      pain and harm.

16              And it is turning over all of its assets under  
17      this plan in a way that the parties interested in the case  
18      have determined best resolves that pain and harm knowing  
19      full well that it never can resolve that pain and harm, and  
20      that is something that will never be fully resolved or even  
21      partially resolved.

22              THE COURT: All right. We had reserved time at  
23      the end of this argument for miscellaneous matters,  
24      including further discussion of the release language in the  
25      plan. I don't know whether there is a remaining argument on

1 the DMP issues or not.

2 MR. GLEIT: Your Honor, Jeff Gleit of Sullivan and  
3 Worcester. I have a -- just a brief statement that I'd like  
4 to make in connection with it, and I'm available to answer  
5 any questions you have.

6 THE COURT: Okay. That's fine.

7 MR. GLEIT: Okay. Thank you, Your Honor. On  
8 Monday morning, Ms. Duvani had stated that the Debtors, the  
9 AHC, and the DMPs reached a settlement in connection with  
10 substantially all of the DMPs objections. The plan with one  
11 narrow exception, that is the objection that the insured  
12 injunction improperly deprived certain DMPs of their rights  
13 as additional insureds under the DMVT insurance policies.  
14 With regard to that objection, the DMPs have agreed to rest  
15 on their papers, which can be found at docket 3306.

16 I'd like to make just one brief point, which is  
17 not in my firm's reply brief but is addressed in Davis  
18 Polk's brief, which is at docket number 3461 at paragraph  
19 206. As we've heard throughout this confirmation hearing,  
20 the plan contains multiple settlements and transactions, all  
21 of which must be approved for this plan to be consummated.  
22 As I'm sure Your Honor's aware, the MVT insurance -- insurer  
23 injunction is one of these essential and integrated  
24 provisions.

25 The Debtor's insurance policies, the rights to

1       which are being transferred to the master disbursement  
2       trust, provide a substantial source of value for the  
3       abatement distributions and the distributions the personal  
4       injury claimants contemplated to be made under the plan.  
5       The MVT insured injunction is essential to preserving and  
6       ultimately realizing the value. It is integral to the plan,  
7       and its applicability to the DMPs is necessary for this plan  
8       to be consummated.

9               Absent questions from Your Honor, I will not  
10       repeat the arguments which are fully set forth in the briefs  
11       of my firm, Davis Polk's firm -- the Davis Polk firm, and  
12       the AHC which are located at docket numbers 3506, 3461, and  
13       3465 respectively. I do want to, though, note to Your Honor  
14       that there was a joint stipulation between the Debtors and  
15       the DMPs which was filed at docket number 3612, which  
16       contains excerpts from the relevant insurance provisions in  
17       the parties' contracts, which the Court may find helpful.

18              So unless Your Honor has questions, I'm happy to  
19       cede the Zoom podium.

20              THE COURT: Okay. That's fine. Thank you.

21              Do the Debtors have any rebuttal, or are they  
22       going to rest on their papers too?

23              MR. GLEIT: I think you mean the DMPs. I'm  
24       (indiscernible) counsel.

25              THE COURT: I'm sorry. Excuse me. The DMPs.

1 WOMAN: No, Your Honor. We rest on our papers.

2 THE COURT: Okay. Very well. All right. So I  
3 had a chance to review what I think are the changes that  
4 were included in the ninth amended plan that was the subject  
5 of discussion at the beginning of this oral argument this  
6 morning. I'm assuming that other parties have too at this  
7 point. I don't know if there are further changes in it, but  
8 I said I would give parties who were objecting to the  
9 breadth of the third party injunction release and the plan  
10 an opportunity to comment on the revisions and as to whether  
11 there was still, in light of those revisions, an issue as to  
12 the breadth of the release.

13 And obviously this is without prejudice to  
14 objectors' other arguments regarding the release, which I've  
15 heard and will be considering. This just goes to the  
16 release language. And I don't know if there's been further  
17 discussion and agreement beyond what was submitted this  
18 morning, so maybe I should ask that question first and then  
19 I'll hear from objecting parties. And I see the Debtor's  
20 counsel on the screen, Mr. Vonnegut. Have there been any  
21 further changes from what was filed this morning or last  
22 night?

23 MR. VONNEGUT: Good afternoon, Your Honor. For  
24 the record, Eli Vonnegut of Davis Polk and Wardwell. There  
25 have been no further revisions to the drafting of the

1 releases. However, we have had several conversations with  
2 Mr. Edmunds of Maryland that I think have been helpful in  
3 clarifying his understanding of how the releases function.  
4 And so I'm happy to walk Your Honor and other parties  
5 through those issues so that hopefully everybody else can  
6 share that understanding, if that would be helpful.

7 THE COURT: Okay. All right. That's fine.

8 MR. VONNEGUT: Okay. So a number of the questions  
9 about the releases that we've gotten this week from Mr.  
10 Edmunds I think are premised on some misunderstandings of  
11 how they work, so I'd just like to clarify a couple of  
12 foundational issues about what is in and what is out.

13 First, there have been a number of references to  
14 conduct that is described as unlawful asking whether claims  
15 arising from unlawful conduct would not be released. That  
16 one is very simple. The very first provision of excluded  
17 claims is criminal claims. Criminal claims are not being  
18 released, period, full stop. What is a little bit harder  
19 and what we have had extensive discussions with Mr. Edmunds  
20 about is capacity limitations.

21 So a variety of parties that received revisions  
22 under the plan only received those releases for claims  
23 against them in their specified capacities. So for  
24 instance, with respect to related parties of the Debtor that  
25 Mr. Edmunds raised, there were a couple of questions along

1 the lines of if some participant in the pharmaceutical  
2 industry had a relationship with the Debtor, do they become  
3 released for all claims against them, and the answer is no.  
4 The only claims that are released that party are claims  
5 against them in their capacity with which they were related  
6 to the Debtor.

7 A similar limitation, which we've discussed before  
8 but I think it bears emphasis because it's important, is  
9 that parties are only released for claims that relate to the  
10 Debtor. So they have to be tied to the Debtor. And again,  
11 it's not the case that if you have one claim against you  
12 released because it is related to the Debtor that other  
13 claims become released. You are only released in that  
14 limited capacity. So if a party had one relationship with  
15 the Debtor and then independent conduct, claims arising from  
16 the independent conduct is not released.

17 Now, the most important issue that we discussed  
18 with Mr. Edmunds that I think is important to emphasize is a  
19 revision that we made in response to Your Honor's commentary  
20 on Monday's hearing regarding the settlement with the  
21 distributors, manufacturers, and pharmacies, the DMPs. So  
22 we had some colloquy about whether those parties are  
23 included in the third-party releases. The answer is no, and  
24 we've now made that very clear in Section 10.6B, which is  
25 the third-party release provision as distinct from the

1 releases of claims held by the Debtors.

2 So we've now added to Section 10.6B a footnote  
3 that says co-defendants are not released parties under  
4 Section 10.6B of the plan. This is important. As we  
5 discussed with Mr. Edmunds, we believe that this addresses a  
6 lot of the concerns and the confusion that have been raised  
7 regarding the scope of the releases here. "Co-defendant" is  
8 a very broad term. It includes any party that is a  
9 defendant in a pending opioid action commenced as of the  
10 effective date. It also includes any holder of a co-  
11 defendant claim. And a holder of a co-defendant claim is  
12 effectively anybody who has asserted or might assert a claim  
13 against the Debtors to attempt to recoup their own costs in  
14 opioid-related litigation.

15 So if you zoom back out, effectively the term is  
16 what it sounds like. Co-defendants in the opioid litigation  
17 are excluded wholly from the third-party releases. And the  
18 only exclusions to that are --

19 MAN: (indiscernible)

20 THE COURT: You can go ahead.

21 MR. VONNEGUT: Excuse me. The only exceptions to  
22 that are current a informer, officers, directors, authorized  
23 agents, and employees of the Debtors. So I'm hopeful that  
24 that helps, Your Honor. I am cognizant that these are  
25 complex, and we've been fielding many, many questions as



1 quickly as we can.

2 THE COURT: Okay. All right. Thank you.

3 MR. VONNEGUT: Of course.

4 THE COURT: I have some comments, but I'm happy to  
5 hear from other parties first. Maybe they have the same  
6 comments.

7 MAN: Your Honor, good afternoon, Your Honor.  
8 Sorry, Brian. Do you want to go first, or you want me to go  
9 first?

10 MR. VONNEGUT: Oh, one more point that I forgot to  
11 clarify. Mr. Edmunds also raised the question of whether  
12 the releases might complicate efforts to obtain discovery in  
13 unrelated litigation. The answer is that they will not. We  
14 received a proposed addition to the plan from Mr. Edmunds  
15 that we're working on, but recipients of releases are still  
16 obligated to comply with subpoenas and other discovery.  
17 We're not attempting to relieve them of that obligation.  
18 And that will be made clear in the next amended plan.

19 THE COURT: Okay. I know you both spoke at the  
20 same time and then neither of you spoke, so I'll just look  
21 to Mr. Edmunds first.

22 MR. EDMUNDS: Thank you, Your Honor. I'll be  
23 brief. I think that we've had this -- Mr. Vonnegut and Mr.  
24 Huebner and I in various, I guess, combinations have had  
25 this discussion for quite some time. The issue -- and I'm

1 not sure that Mr. Vonnegut's presentation exactly resolves  
2 it as we agreed over the lunch hour that we took when Mr.  
3 Huebner, Mr. Vonnegut and I were on the call to resolve it.

4 But let me just -- the issue narrowly that I have  
5 been raising and on behalf of other objecting states have  
6 been raising is that the -- is the same one that you went  
7 over Monday, which is that the definition of related  
8 parties, specifically Debtor-related parties who were  
9 released under 10.6B is very broad. And we -- the position,  
10 our position, is that those releases are inappropriate if  
11 they release people who independently, who are not closely  
12 connected with the Debtors, those who have independently  
13 engaged in conduct, including conduct that involves the  
14 marking and sale of produced opioids. There is -- so there  
15 has been --

16 THE COURT: Can I -- I'm sorry to interrupt just  
17 for a second. 10.6D, is that the Debtor release or the  
18 third-party release?

19 MR. EDMUNDS: It's B, Your Honor, and it's the  
20 Debtor release. It's the --

21 MAN: 10.6B is third-party. The Debtor release is  
22 10.6A, Your Honor.

23 THE COURT: All right. So --

24 MR. EDMUNDS: Right.

25 THE COURT: -- I think it's important to keep the

1 -- so we're talking about the third-party release?

2 MR. EDMUNDS: Yes, we're talking about the third-  
3 party release --

4 THE COURT: All right.

5 MR. EDMUNDS: -- of the Debtor-related parties,  
6 and I misunderstood your question.

7 THE COURT: Right. Okay.

8 MR. EDMUNDS: The third-party release of claims  
9 against Debtor-related parties --

10 THE COURT: Right.

11 MR. EDMUNDS: -- which is the issue here. And  
12 that could be very broad, and that's as literally  
13 incorporated as it's broad. There is a new footnote, and  
14 this is a new understanding that I understood Mr. Huebner  
15 was going to clarify this afternoon on the record, which is  
16 that those actors, the related parties who, in their own  
17 right, engaged in the same misconduct related to Purdue  
18 should not be released and are released, they are arguably  
19 partially incorporated in -- if you go through a string of  
20 definitions, the definition of co-defendants.

21 And the definition of co-defendants then  
22 incorporates the holders of co-defendant claims under which  
23 you can make an argument that those who participated in  
24 Purdue's opioid-related conduct are, in fact, released by  
25 the footnote.

1           MAN: One issue I just want to clarify, the  
2           footnote makes clear that co-defendants are not released.  
3           That is the purpose of the footnote. It is not expanding in  
4           any way.

5           MR. EDMUNDS: I may have miss -- I may have  
6           omitted a "not", but I think that's sort of the reason that  
7           this is getting difficult. We're going through multiple  
8           layers of --

9           THE COURT: Well, if the intent is that they don't  
10          have that release, then the parties can make that clear.  
11          And that's what I'm hearing, at least.

12          MR. EDMUNDS: I think that we have agreed. I  
13          thought it was going to be made clearer on the record. I  
14          think that there is still an issue that needs to be that --  
15          and Mr. Vonnegut and I have been discussing this by email  
16          during the hearing this afternoon. I think that there is  
17          something -- some work that we still need to do, and I think  
18          that we will be able to do that.

19          But I wanted to -- we may not be arguing before  
20          the Court again on this issue, so I wanted to explain  
21          overall what the issue is that we are trying to resolve, and  
22          that is that wrongdoers shouldn't be released from state  
23          police power claims when they've not contributed to the  
24          plan. And I think that we're -- there is an agreement in  
25          principle as to that. I think we need to make sure that the

1 language is -- it incorporates that and is clear. And clear  
2 because I think we'll face interpretive questions over that  
3 if it's not in implementing our police powers. So --

4 THE COURT: Well --

5 MR. EDMUNDS: -- that's the concern, and I think  
6 --

7 THE COURT: All right.

8 MR. EDMUNDS: -- we can work on that.

9 THE COURT: I want to be clear, though. I think  
10 that I heard from Mr. Vonnegut that there was an agreement  
11 generally on that point. But on the other hand there are  
12 certain causes of action that the Debtor has, such as, you  
13 know, failed to supervise vicarious liability, veil-piercing  
14 alter ego, things like that where a discharge of the Debtor,  
15 if someone was acting just without wrongdoing, you know,  
16 without their own knowledge of unlawful conduct, really  
17 shouldn't be a back door to violate the bankruptcy discharge  
18 or the injunction from those who were contributing.

19 So that's where I draw the line. And it really  
20 should go truly to their own independent wrongful conduct,  
21 not conduct as, you know, an employee of the Debtor, just as  
22 an employee of the Debtor. And this is similar to the  
23 language in Section 524(g)(4), you know, which provides for  
24 an injunction of claims related to the Debtor based on the  
25 third-party's involvement in the management of the Debtor or

1 predecessor to the Debtor, or services as an officer or  
2 director or employee.

3 So those types of claims really shouldn't -- I  
4 view -- and there is going to be some line-drawing here that  
5 you can't do -- inevitably, there might be someone who gets  
6 sued where you're not sure until you actually look at the  
7 facts carefully, which is why I think they have the  
8 provision to come back here. And I've done this once in  
9 another case, and I found that the injunction actually  
10 applied in one situation but not in another, and that may  
11 well happen. But I think if there is separate independent  
12 wrongdoing that's short of being illegal, a crime, which no  
13 one is protected from by a co-defendant, we do carve it out.

14 And that would cover any -- you know, any third-  
15 party like, I don't know, some pharmacy chain that Perdue  
16 dealt with. But if you're talking about officers,  
17 directors, employees, you know, the case law is pretty clear  
18 that you can't, through the back door, go after them just  
19 because they worked for a company that you would have a  
20 claim against. So I hope that provides some guidance to you  
21 all.

22 MR. EDMUNDS: It does, Your Honor, and that's not  
23 the issue. The issue is to take, for example, the seven, I  
24 think, entities identified on the -- actually, entities or  
25 individuals identified on the excluded party list, or at

1       least the corporate ones that are there. Those are actors  
2       who engaged in Perdue's marketing, but they're not  
3       employees. They're not close to the company. They're not  
4       of the kind that you're mentioning.

5               And the idea is just to make sure that these  
6       releases do not categorically apply to what Mr. Uzzi  
7       referred to this morning as, you know, the undiscovered  
8       McKenzie.

9               THE COURT: Right. If -- obviously, if they have  
10      engaged in their own separate wrongdoing, and I think the  
11      Debtors -- I think if I heard Mr. Vonnegut correctly, the  
12      Debtors agree with you on that. It's just a matter of  
13      making the language clear.

14             MR. EDMUNDS: Right. I think that's the case.

15             MR. VONNEGUT: That's correct, Your Honor.

16             THE COURT: Okay.

17             MR. VONNEGUT: Unsurprisingly, we think you've got  
18      it exactly right. The independent conduct is not released.  
19      Co-defendants, period, full stop, do not get third-party  
20      releases.

21             THE COURT: Okay. All right. Okay. Should I  
22      have Mr. --

23             MR. EDMUNDS: Thank you, Your Honor.

24             THE COURT: Should I have Mr. Fogelman then?

25             MR. FOGELMAN: Thank you, Your Honor. Good

1       afternoon. This is Larry Fogelman on behalf of the United  
2       States. Your Honor, as you said while preserving all of our  
3       arguments set forth in our statement, the changes made  
4       overnight do not address the very issues the Court has  
5       raised throughout this hearing concerning the extraordinary  
6       overbreadth of the non-Debtor releases, including Your  
7       Honor's admonition that the non-Debtor releases should not  
8       include fraud concern non-opioid products. Let me explain.

9               First, the release in Section 10.7B still covers  
10       everything related to the Debtors, et al. The key language  
11       has not changed. The release includes all causes of action  
12       based on or relating to the Debtors, to the estates, or the  
13       Chapter 11 cases. That covers literally everything. Now,  
14       there is a carve-out to the extent that such of action "is  
15       based on such shareholder release parties actual and  
16       separate non-opioid actual misconduct".

17              But the definition of non-opioid actual misconduct  
18       is too narrow and does not clearly permit (indiscernible)  
19       concerning the other pharmaceutical products that the  
20       Debtors manufactured, including (indiscernible), as well as  
21       any other liabilities that could arise from owning and  
22       operating a pharmaceutical company, including police and  
23       regulatory claims. These could relate to state consumer  
24       protection statutes, state public nuisance laws, state  
25       environmental liabilities, state workplace safety laws,



1 state employment laws, state civil fraud claims, state fraud  
2 and contracting, any state ADA laws, state labor laws just  
3 to name a few examples.

4 THE COURT: So, could I interrupt?

5 MR. FOGELMAN: Specifically, Your Honor -- yeah.

6 THE COURT: Could I interrupt you? I had the same  
7 reaction, I have to confess, when I read the definition of  
8 non-opioid actual misconduct. I had two reactions. The  
9 first was I -- it seemed in clause 1 to take away what it  
10 gave at the beginning of clause 1. It says an action taken  
11 or not taken --

12 MR. FOGELMAN: I --

13 THE COURT: -- deliberately or recklessly in bad  
14 faith, and with actual knowledge. So reckless is not with  
15 actual knowledge, but so --

16 MR. FOGELMAN: That --

17 THE COURT: -- so it seems to take away language  
18 that arguably is there, but that I think it takes away. But  
19 more importantly, I have this point. And again, I am  
20 distinguishing between releases --

21 MAN: (indiscernible)

22 THE COURT: -- that a debtor can give and is  
23 giving here based on the Debtor's own analysis --

24 MAN: (indiscernible)

25 THE COURT: -- and I think everyone else's

1       analysis, as to the types of things that are listed in the  
2       language at the bottom of the next definition. Veil-  
3       piercing alter ego, agency vicarious liability, constructive  
4       notice, controlled personal liability, failure to supervise,  
5       or otherwise, with the exception of maybe of controlled  
6       personal liability. Those are all things that a debtor can  
7       release. Those are all -- there's no contention here that  
8       any individual, as to these non-opioid matters, has taken  
9       any action that would give rise to anything like this, and  
10      it's the Debtor's claim in the first place.

11               So I can see why one would want to make it clear  
12      in the Debtor release that this covers this type of conduct,  
13      and I don't have a problem with a strike-suit mechanism that  
14      has people -- if there's any doubt as to which side of the  
15      line it would fall on, bringing their suit here first. But  
16      I just -- I don't -- by definition, then, what we're talking  
17      about are not debtor claims, but third-parties claims. I  
18      just -- I'm not -- I don't see why we are covering them in a  
19      release for non-opioid conduct. I just don't -- why?  
20      There's no money being paid for that.

21               MS. MONAGHAN: Your Honor --

22               MR. FOGELMAN: Your Honor, I see both Ms. Monaghan  
23      and Mr. Uzzi looking like --

24               THE COURT: Right.

25               MR. FOGELMAN: -- they're ready to address that, so

1 I'll let them.

2 THE COURT: Right.

3 MS. MONAGHAN: I'll start, Your Honor, and then  
4 Mr. Uzzi can talk you through the language. So I don't want  
5 you to get the wrong idea about us. We were trying to draft  
6 a release that matched and mirrored the claims that have  
7 been made and not anything else. But even though claims for  
8 things like alter ego or vicarious liability are estate  
9 claims, the complaints here have frequently almost, you  
10 know, without exception raised claims on the theory that the  
11 former directors are vicariously and strictly liable for  
12 everything the company did.

13 THE COURT: Yeah, and I --

14 MS. MONAGHAN: So for example --

15 THE COURT: -- want to be clear. I don't have a  
16 problem with that as far as the language of a release, again  
17 tracking 524(g)(4). But we're talking now about non-opioid  
18 conduct, and --

19 MS. MONAGHAN: So let me turn to that.

20 THE COURT: -- if someone just, you know, says  
21 that director so-and-so or officer so-and-so, not a Sackler  
22 person, but just -- you know, or a Sackler I suppose, is  
23 liable for alter-ego, that's an estate claim, and it's being  
24 released by the estate. So I don't think -- I think other  
25 than having a mechanism to come to the court if you're going

1 to be asserting such a claim, you need anything more than  
2 the estate release to the Debtor release. And it just  
3 complicates things to include all this other stuff, and the  
4 alter-ego, etc.

5 Because what is the other stuff? It has to be  
6 something broader than that, that isn't an estate claim.  
7 And if it's for non-opioids, I don't see -- I mean, that's  
8 not been the focus of the case. It's not the basis for the  
9 settlement.

10 MS. MONAGHAN: So, Your Honor, we tried to draft  
11 the release in a way that addressed what we see as the  
12 fundamental problem with the non-opioid claims, which is  
13 that they are often opioid claims in disguise.

14 THE COURT: Well, all right, but that would be  
15 released. And so, you could say that, again, even if it's a  
16 opioid claim in disguise, it's released and you have to come  
17 to the Court if you're saying no, it's not in disguise, so  
18 you don't have litigation in Florida by the equivalent of  
19 the people in the Madoff case that kept saying, oh, it's not  
20 really a claim against the Madoff estate, it's something  
21 else.

22 MS. MONAGHAN: That, frankly, Your Honor, is what  
23 we were nervous about. The concept that the release extends  
24 to or does not extend to non-opioid related activity that a  
25 person actually undertakes, as opposed to something that's

1 just being attributed to them by virtue of their position as  
2 a director or shareholder.

3 THE COURT: All right.

4 MS. MONAGHAN: That is what we were trying to  
5 capture.

6 THE COURT: Okay, but --

7 MS. MONAGHAN: If the language doesn't do that, I  
8 think we can try to address.

9 THE COURT: I don't think -- see if I get this  
10 right. I don't think the way to address those concerns,  
11 which are legitimate ones, is to create a category of  
12 misfeasance that is excluded from the release. I think it's  
13 to create a category that's clearly covered by the Debtor  
14 release and to make it clear that you can't get around the  
15 settlement release, which is over opioid related claims, by  
16 creative pleading.

17 And ultimately, the Court that imposes the release  
18 should be the person that decides whether it's creative  
19 pleading or whether it's legitimate, and that is an issue.  
20 I mean, that, as I said in the case that I was referring to,  
21 the released party one on one point and lost on the other  
22 one and, frankly, the only one that had any value was the  
23 one they won on, so the party stopped suing.

24 But that plan didn't have the gatekeeping  
25 mechanism. They had to go down to Florida and they had an

1 extra, you know, two stages of litigation and expense before  
2 they finally got up here. But I think I'm happy with the  
3 gatekeeping mechanism like that if the gate is clear enough.

4 MR. UZZI: Your Honor, for the record, Gerard Uzzi  
5 of Milbank on behalf of the Raymond Sackler Family.

6 Look, we take a great deal of comfort with the  
7 gatekeeping mechanism. But it does matter what those gates  
8 are or what the gate that needs to go through, I guess, is  
9 the better, you know, metaphor.

10 But, you know, I do think, and I'd like to address  
11 for a moment, Your Honor, what these releases were always  
12 intended to pick up and whether it's supposed to be non-  
13 opioid -- excuse me -- only opioid liability or whether it  
14 was supposed to be broader than that.

15 And, Your Honor, I think we need to put these  
16 releases and this plan in the context of the facts and  
17 circumstances that brought this plan before the Court. And  
18 along those facts and circumstances are that we were  
19 approached by our counterparties -- so the creditors are  
20 large, the Debtors here, the fiduciaries -- to negotiate a  
21 release that was expressly supposed to be what we've said  
22 global peace, but, you know, is a complete and clean  
23 separation from these Debtors for all civil liability.

24 And that's in the record, Your Honor. It's in the  
25 record, Ms. Conroy --

1 THE COURT: It really isn't. I mean, David  
2 Sackler said it was for opioid liability. I know others  
3 said --

4 MR. UZZI: Well, he said --

5 THE COURT: -- they wanted global peace and they  
6 were going to rely on the lawyers. But look, the way this  
7 reads right now, non-opioid actual misconduct, if David  
8 Sackler -- it probably hasn't happened, but if he was in a  
9 car accident where he was negligent, it would be released  
10 because this doesn't cover negligence and that can't be  
11 right.

12 MR. UZZI: Well, I agree with that, Your Honor,  
13 but I don't believe it's -- I believe it can't be right, but  
14 I also don't believe that's what's picked up here. I mean,  
15 I don't -- if he's in a car accident, whether he's negligent  
16 or not --

17 THE COURT: Well, all right. If he was driving a  
18 company car.

19 MR. UZZI: I don't -- I don't believe, Your Honor,  
20 that is in the release as it relates to -- and it was Mr.  
21 Vonnegut said there are capacity limiters on both ends of  
22 the release, and there's a capacity limiter also with  
23 respect to the party who's granting the release.

24 And so, you know, a car accident in a company car  
25 that is the negligence of the individual person is not an

1 action taken in the capacity as the employee or the director  
2 or the shareholder or whatever it may be of the Debtors, and  
3 we're not trying to pick that up, Your Honor.

4 What we were trying to do here, Your Honor, what  
5 we were trying to do is we're trying to be responsive to the  
6 allegation of or maybe a concern that if there were facts  
7 that were later discovered that people would have said, hey,  
8 you know, that was conduct that should not have been  
9 released had we identified it today that it can be picked up  
10 here.

11 But if we listen to the testimony, Your Honor, and  
12 the questioning in this case -- I mean, you know, in the  
13 record, you know, as far as the investigation that --

14 THE COURT: Well, all right, I'm going to cut you  
15 short. I just think that would mean then that this language  
16 is, I think, too narrow. I understand your point. If  
17 someone is being sued just because they were a board member,  
18 all right, or just because they were an officer because it  
19 turned out that, you know, Purdue had negligently put  
20 together the formula for a non-opioid drug and they were  
21 just being sued as an officer or an employee, I think the  
22 Debtor release covers it.

23 But I also think there are probably claims that  
24 are not deliberate and with actual knowledge that  
25 legitimately someone's conduct might actually -- their own



1       conduct, not just conduct as an officer, but their own  
2       individual conduct would make them liable for that product,  
3       and we've done nothing about that hypothetical product in  
4       this case. So either this has to be really --

5               MR. FOGELMAN: Your Honor, can I give --

6               THE COURT: I mean, look, in the case --

7               MR. FOGELMAN: I'm sorry.

8               THE COURT: In the case law, the Second Circuit,  
9       including in the Quigley case and in the Manville IV case  
10      after the remand from the Supreme Court has really cabined  
11      the term derivative -- or actually expanded the term  
12      derivative from how it's normally used, which is a claim on  
13      behalf of the debtor or through the debtor to be something  
14      broader than that. But there's some limits to that, and  
15      it's not just based on, you know, actual knowledge of  
16      misconduct or bad faith or deliberate. It can be separate  
17      and independent conduct.

18              So I want to -- I think if you're going to cover  
19      non-opioid claims, it really needs to be something more than  
20      just Debtor related and really bad stuff.

21              MR. FOGELMAN: Can I -- sorry.

22              THE COURT: I mean, non-debtor related or really  
23      bad stuff, because you can have debtor-related stuff that I  
24      think would fall outside of the Second Circuit's admittedly  
25      broad definition of what a derivative claim is, is that

1 entitled to a release under the right circumstances under a  
2 plan, and I don't think this language does it.

3 And you can spend a lot of time dealing with that  
4 language or you can just carve out non-opioid conduct,  
5 except for conduct that is independent of one's acting under  
6 one's duty as an officer, director, or, you know, alter ego,  
7 veil piercing, et cetera, all of which is clearly  
8 derivative.

9 MR. FOGELMAN: Your Honor, that's all helpful, and  
10 I take to heart your comments that you believe that many of  
11 those claims, like the failure to supervise claim, would be  
12 a Debtor claim. That may be right, Your Honor, it may not  
13 be, depending upon how somebody would plead it.

14 I'd like to give you the example or one of the  
15 examples we're trying to solve for Your Honor, just to put  
16 it clearly out there. You've heard a lot about Adhansia in  
17 the questioning, and there's certainly a fair amount of  
18 inuendo about Adhansia and what the Sacklers involvement in  
19 Adhansia may have been. Adhansia was one of the search  
20 terms in the discovery that was taken.

21 There's been plenty of discovery and plenty of  
22 investigation about Adhansia. Adhansia was not approved by  
23 the FDA until all of the Sacklers were off the board.  
24 Adhansia wasn't launched until about the petition date.

25 And so, anything that relates to Adhansia, the

1 marketing and sale of Adhansia has been done by a Chapter 11  
2 debtor with a pristine board under the supervision of this  
3 Court and under the supervision of a court-appointed  
4 monitor. Yet, yet there seems to be a pretty clear effort  
5 that people want to string something along and tie some sort  
6 of wrongful conduct to the Sacklers around Adhansia.

7 Now, if in fact, one of the Sacklers or one of the  
8 released parties, not just the Sacklers, did something with  
9 respect to Adhansia that was reckless or deliberate and  
10 intended to cause harm, of course, that should be carved  
11 out, Your Honor.

12 But these creative legal theories on trying to --  
13 and I'm just picking Adhansia of one example of trying to  
14 bring the Sacklers back in and seems to be intended to get  
15 through a back door is what we're trying to solve for.

16 I'm not particularly wedded to how we solve for  
17 that, Your Honor, but it is something that either --

18 THE COURT: Again, to me, if people are suing  
19 them, I guess it's perfectly legitimate to not to want to  
20 have your clients even be sued for just being on the board,  
21 which includes getting information, or for being an officer.

22 But at the same time, you're putting the onus on  
23 the party suing to show not only that that isn't the case,  
24 but also that they acted deliberately, recklessly, or in  
25 some other standard that's not really tied, I think,

1 necessarily to a cause of action that would be independent.  
2 I think you might be trying, although I didn't like this  
3 language, to do that.

4 But I think a -- I mean, I just -- Adhansia is not  
5 a control person liability type of liability, right? It  
6 just isn't. That's not --

7 MR. FOGELMAN: I don't know, Your Honor. I mean,  
8 that's the problem that I have. I just -- I don't know.

9 THE COURT: But no one has asserted in this case,  
10 it's just can't be -- and they're not paying for it.

11 MR. FOGELMAN: No, but, Your Honor --

12 THE COURT: They're paying for peace of mind --

13 MR. FOGELMAN: Your Honor --

14 THE COURT: -- over something that I think they  
15 get peace of mind on just by the fact that they can't be  
16 sued as an officer and director.

17 MR. FOGELMAN: I think what we bargained for, Your  
18 Honor, is a complete separate from civil liability.

19 THE COURT: No, I don't --

20 MR. FOGELMAN: Now, I recognize --

21 THE COURT: The record doesn't show that. I'm  
22 sorry, the record just doesn't show that.

23 MR. FOGELMAN: I think that --

24 THE COURT: It doesn't show that.

25 MR. FOGELMAN: Your Honor --

1 THE COURT: It doesn't show that your clients  
2 bargained, for example, for release from CERCLA liability.

3 MR. FOGELMAN: It's (crosstalk).

4 THE COURT: It just doesn't.

5 MR. FOGELMAN: Your Honor, I mean, the settlement  
6 agreement and this plan speaks for itself as far as what the  
7 bargain was. The testimony of Miss Conroy made it clear  
8 that they wanted the peace premium, that they want to be --

9 THE COURT: Miss Conroy is a PI lawyer. She's not  
10 an environment lawyer. If the Sacklers have control group  
11 liability for an undiscovered Superfund site, I'm not giving  
12 them a release. It's just not going to happen period.

13 MR. FOGELMAN: But, Your Honor --

14 THE COURT: It's not going to happen period. It's  
15 not going to happen, and the lawyers should realize it.  
16 That's it. I've given you enough time to draft it. I'm  
17 telling you how it should be drafted now because you  
18 haven't' drafted it. I am not releasing them from a  
19 Superfund site, for example, which would be related to  
20 Purdue. That's not what this case is about. Had enough of  
21 this.

22 MR. FOGELMAN: Your Honor, we will --

23 THE COURT: And no court would affirm me if I did  
24 on appeal.

25 MR. FOGELMAN: Your Honor, they think --

1           THE COURT: It didn't even affirm -- it wouldn't  
2           have affirmed Judge Lifland if the interpretation was right  
3           as to the separate fraud of the insurance company to the  
4           asbestos claimants. Now the question wasn't that it was  
5           fraud; it's that it was separate. So you can't define your  
6           way out of that by behavior unless you cover all of the  
7           types of claims that could be raised for separate conduct,  
8           not the Debtor conduct or as an officer and director of the  
9           Debtor.

10           So look, you're not going to persuade me on this,  
11           that you're just not going to persuade me.

12           MR. FOGELMAN: I'm not trying to persuade you to  
13           go further, Your Honor, then I think what I'm asking for.  
14           What we've tried to address is that very issue of the  
15           separate conduct. Maybe we didn't do it well. We will take  
16           another shot at this, Your Honor, and try and submit  
17           something.

18           THE COURT: All right, but the times a' wasting.

19           MR. FOGELMAN: Understood.

20           THE COURT: And I think there are going to be  
21           examples that you're not going to be able to cover unless  
22           you do it the other way around and not do it with the  
23           gravamen of every potential truly separate claim and instead  
24           say that this release will cover, because it's a Debtor  
25           release, as to non-opioid conduct claims that the Debtor

1 would have and those are expansive, including derivative  
2 claims for acting improperly on the board, for example.

3 But if there's a separate claim that doesn't fit  
4 into that and it comes back to the Court and the Court finds  
5 that, this release shouldn't cover it.

6 MR. FOGELMAN: That's helpful.

7 THE COURT: I think that the released parties  
8 should have the protection of strike suits brought all over  
9 the country. Instead, they should be channeled here, and  
10 you should be able to show this to a state court or a  
11 federal court in wherever, Tennessee or Florida or wherever,  
12 saying, no, you know, they had to come to the bankruptcy  
13 court first to decide whether this provision applied or not.

14 I understand that and I've encouraged that, but I  
15 just don't think you can define out by qualitative types of  
16 misconduct from this release, unless they're going to pay a  
17 lot more than they're paying because they're not paying to  
18 be released from a CERCLA claim, for example.

19 MR. FOGELMAN: And, Your Honor, we were not trying  
20 to do that, so --

21 THE COURT: Well, but this -- I mean, that would  
22 be the effect.

23 MR. FOGELMAN: Understood, Your Honor. Well,  
24 there is a separate carveout for all federal liabilities, so  
25 technically --

1 THE COURT: Well, state law equivalent.

2 MR. FOGELMAN: But understood, Your Honor, but  
3 understood.

4 THE COURT: All right.

5 MR. FOGELMAN: So we will do our best, Your Honor,  
6 to accommodate or to address your --

7 THE COURT: All right. No, Mr. Fogelman, I think  
8 -- I mean, you have other points, but there is a balance  
9 here under the case law. And I'm not asking you to waive  
10 your rights to say that case law is wrong, but there's a  
11 balance here between how the Second Circuit defines broadly  
12 derivative actions that can be enjoined and separately  
13 independent actions that can't. And I think what I'm  
14 getting at is how you draw that line.

15 MR. FOGELMAN: I appreciate Your Honor's  
16 considering our argument, and I have nothing further at this  
17 time. Thank you.

18 THE COURT: Okay. All right. I mean, look, this  
19 is all over the case law. The Carter Corporation, Judge  
20 McMahon says, you know, you address what you were settling  
21 and not everything else, and they rewrote the plan in  
22 Carter. It was a small plan, it's a small construction  
23 company, but they rewrote it, and they shouldn't have had  
24 to.

25 MR. SCHWARTZBERG: Good afternoon, Your Honor.



1 Paul Schwartzberg from the U.S. Trustee's Office.

2 THE COURT: Afternoon.

3 MR. SCHWARTZBERG: Thank you, Your Honor. I just  
4 wanted to take up the opportunity Your Honor had offered.  
5 We do have a few comments on the recent changes, in addition  
6 to what we had filed in our objection and our oral  
7 arguments.

8 And I wanted to bring the Court's attention of the  
9 new definition of shareholder releases, which is now Exhibit  
10 X to the shareholder agreement, as well as the defined term,  
11 "designated shareholder release parties," which is Exhibit S  
12 to the shareholder agreement. And I wanted to point out --  
13 Your Honor, can you hear me?

14 THE COURT: Yes. I can hear you fine.

15 MR. SCHWARTZBERG: Okay. All right, thank you,  
16 Your Honor.

17 I wanted to point out first the shareholder  
18 agreement as testimony shared, it has not actually been  
19 finalized yet, so the released parties are Exhibit X and  
20 Exhibit S could be expanded and we don't know who those are.  
21 And, in fact, Your Honor, pursuant to the shareholder  
22 agreement of Section 1106, even after it's signed, it could  
23 still be amended, and I think between agreement of the NBT  
24 and the Sacklers. So we're concerned that even after --

25 THE COURT: I'm assuming it will be attached to

1 the confirmation order and the parties will have a chance to  
2 review it before the order is entered.

3 MR. SCHWARTZBERG: But, Your Honor, even after the  
4 order is entered, the shareholder agreement does allow --

5 THE COURT: No, no, not after the order is entered  
6 because that's the injunction.

7 MAN 1: Your Honor, we're not going to be adding  
8 parties.

9 THE COURT: No.

10 MAN 1: Mr. Fogelman doesn't need to worry about  
11 that.

12 THE COURT: They wouldn't be able to even if they  
13 wanted to. They're not going to do that.

14 MR. SCHWARTZBERG: Could they make the case,  
15 Section 11.06 to make it clear that the amendments that they  
16 can make only are up to confirmation?

17 THE COURT: Well, put it in the confirmation  
18 order. The Court's approving this and nothing further.

19 MR. SCHWARTZBERG: Thank you, Your Honor. That  
20 would be very helpful.

21 THE COURT: Okay.

22 MAN 1: That works for us, Your Honor.

23 MR. SCHWARTZBERG: And as I said also, Your Honor,  
24 Exhibit X still -- we were talking about the breadth of the  
25 releases. Exhibit X still includes as related entities the

1 businesses, the assets, and the entities owned by Side A.

2 We believe this is overly broad and, in fact, I believe it  
3 was Mr. Mortimer Sackler had indicated he couldn't even  
4 identify all of his investments, so we think that term is  
5 too broad.

6 THE COURT: Why?

7 MR. SCHWARTZBERG: Unidentified, Your Honor, at  
8 this point. We can't identify.

9 THE COURT: But if you cabin the -- there's no --  
10 these are the payors, right? And as we've just discussed,  
11 what's going to be released as far as third parties is  
12 opioid-related claims. So there's no indication that any of  
13 these entities, separately and apart in conjunction with  
14 Purdue, was engaging in any opioid-related activity.

15 On the other hand, they are backing up the payment  
16 of the plan.

17 MR. SCHWARTZBERG: Our concern, Your Honor, is  
18 these are entities that even the Sacklers may not know.

19 THE COURT: But -- all right. Keep going.

20 MR. SCHWARTZBERG: I'll move on to my next point,  
21 Your Honor.

22 THE COURT: Okay.

23 MR. SCHWARTZBERG: In regard to the --

24 THE COURT: I guess you haven't read the discovery  
25 that the committee and the Debtors had, right?

1 MR. SCHWARTZBERG: That's correct, Your Honor.

2 THE COURT: Okay. They have.

3 MR. SCHWARTZBERG: Your Honor, in regard to the  
4 non-opioid misconduct claims, we -- I think you had  
5 addressed that, and we just reserve our rights on that to  
6 see what the new drafting is regarding this because we had  
7 concerns regarding that.

8 And then last point, Your Honor, I had is just a  
9 concern regarding, once again, the breadth of the releases.  
10 We do note that the Debtors -- we're trying to figure out if  
11 the Debtors are including released parties that are not --  
12 releasing parties that are not -- or causing releases that  
13 will be suffered by parties that are not creditors of this  
14 case.

15 The releasing parties include holders of claims  
16 and causes of action. And I know the bankruptcy code  
17 defines creditors in this case as just part of the holders  
18 of claims. So when they throw in holders of claims and  
19 causes of actions, it makes it look like they're trying to  
20 expand those who are going to give releases to those who are  
21 not creditors in the case. And if they need to limit it to  
22 just people who are creditors in the case, they should make  
23 it clear in the documents, Your Honor.

24 And I believe those are the only additional  
25 comments I had, unless Your Honor has any questions.

1 THE COURT: Okay.

2 MR. UZZI: Nothing further from the Debtor, Your  
3 Honor.

4 MR. GOLDMAN: Your Honor, may I be heard briefly?

5 THE COURT: Sure.

6 MR. GOLDMAN: Irve Goldman, Pullman Comley, for  
7 the State of Connecticut.

8 I had agreed to very briefly address this argument  
9 under the miscellaneous topic, as opposed to separately. I  
10 don't expect to take more than five minutes on this, Your  
11 Honor, so I hope you'll bear with me.

12 So I'm presenting this in addition to the states  
13 that joined our objection either expressly or by  
14 incorporation, and also on behalf of Rhode Island and  
15 Delaware. It relates to the argument in our brief that the  
16 plan infringes on the states' rights to have had their  
17 police power claims adjudicated with damages fixed in the  
18 actions they commenced against Purdue in their own courts.

19 And this relates to Section 362(b)(4), the  
20 legislative history of which provides that the purpose of it  
21 is to allow a government action for a violation of a  
22 consumer protection law to proceed unabated by the automatic  
23 stay in order to "fix damages for violations of such a law."

24 The plan takes away that right by channeling all  
25 the states' claims to the NOAT Trust, which will be funded

1 by the Sackler plan contributions, and then distributing  
2 those funds based on a state-by-state allocation percentage.  
3 And in fact, it's a pot plan from which the states will take  
4 their allocated share of what is put in the pot.

5 This mechanism, we contend, eliminates the states'  
6 rights to fix damages in their own actions, and therefore,  
7 the plan doesn't comply with the applicable provisions in  
8 Title 11.

9 I realize it would have been administratively  
10 cumbersome and time-consuming to have allowed for the fixing  
11 of damages in those actions in this case, but that is simply  
12 the hand the Debtors were dealt when they invoked the  
13 protections of the bankruptcy court, and I would submit they  
14 must therefore live with the burdens of the Code. And that  
15 is set forth in 362(b)(4).

16 I would also submit that administrative  
17 convenience can't be allowed to trump the clear protection  
18 provided for states to fix their claims for damages without  
19 being held up by the automatic stay.

20 THE COURT: Well --

21 MR. GOLDMAN: And that's all I have, Your Honor.

22 THE COURT: -- that's already been litigated and  
23 affirmed on appeal, without any further appeal. I'm not  
24 quite sure what you're saying at this point. Are you  
25 suggesting that even though 362 by itself wouldn't apply

1 post-confirmation, that somehow they would have a right to  
2 liquidate their claims, even though they would get whatever  
3 recovery they'd get under the plan? So they would --

4 MR. GOLDMAN: No, I'm not saying --

5 THE COURT: -- the states would actually spend the  
6 money to do that?

7 MR. GOLDMAN: No, I'm not saying that, Your Honor.  
8 I'm saying that that was a preliminary injunction. It  
9 wasn't a permanent injunction --

10 THE COURT: Right.

11 MR. GOLDMAN: -- to stay the states. And the fact  
12 that we're at the confirmation stage should not cut off the  
13 rights to have liquidated those claims --

14 THE COURT: That's the --

15 MR. GOLDMAN: -- because of --

16 THE COURT: -- whole reason that the... Look,  
17 Congress, in the legislative history made it clear that one  
18 could still enjoin police power under the right  
19 circumstances to liquidate a claim. And of course, the  
20 provision itself says it doesn't apply to payment of the  
21 claim. The plan is just providing for payment of the claim.  
22 So I just -- I hear your argument, but frankly, it  
23 makes no sense. It's another sand in the gears. I mean,  
24 it's just...

25 MR. GOLDMAN: I hear Your Honor. I'm just trying

1 to make the point that I understand the injunction was  
2 issued and it was preliminary. I don't think that that  
3 means we shouldn't have had the right to -- before the plan  
4 reached the confirmation stage -- to liquidate those claims,  
5 instead of having them just put into a trust based on an  
6 allocation formula.

7 THE COURT: In fact, the injunction applies  
8 through confirmation, and then the stay is no longer in  
9 place, and therefore, 362 doesn't apply at all. Instead,  
10 it's the plan.

11 MR. GOLDMAN: I would maintain that because of  
12 that, our rights are subverted under 362(b)(4). And I'll  
13 just leave it at that, Your Honor.

14 THE COURT: Okay.

15 MR. KAMINETZKY: Your Honor, if I could briefly  
16 respond? Benjamin Kaminetzky, of Davis Polk, for the  
17 Debtors.

18 THE COURT: Okay, fine.

19 MR. KAMINETZKY: I know -- I'm actually so happy  
20 that this was raised, because we've all been wondering what  
21 plan B was for the objecting states, and I think this is  
22 just a perfect way to end today. Because what they're  
23 saying is that we should go back to the first day of this  
24 case, when the Debtors basically said, we're done, we're not  
25 litigating anymore. In Your Honor's words, we've given



1 ourselves up.

2 But they're still demanding -- and then we've  
3 worked for months and months, years, on a distribution  
4 mechanism, but now they're saying, you know what, we want to  
5 have a trial anyway on the merits against the Debtors, who  
6 aren't contesting liability, just for like fun, so that we  
7 could then...

8 I don't know -- are they saying then they'll go  
9 back to the NOAT anyway after they have their show trial,  
10 that we're not contesting liability, and they'll abide by  
11 the NOAT? Or are they saying, no, we won't; we'll jump the  
12 line, and the State of Connecticut will ignore the last two  
13 years, and we'll get our judgment against the Debtors, who  
14 aren't contesting liability, and we'll get everything? It  
15 is just so confounding.

16 And I'm actually -- this is a great way to end the  
17 hearing because what we've just showed is that there's  
18 absolutely no alternative other than going back to September  
19 of 2019, relitigating the automatic stay, having Your Honor  
20 give us this day. And this isn't even what was  
21 controversial about the automatic stay.

22 Remember, the automatic stay that was the most  
23 controversial was the Sacklers. He's saying he wants to  
24 litigate. They want to have 50 trials. Maybe it's even  
25 more. Maybe because -- I'm not sure if this goes to all the

1       instrumentalities of the stay too, so we should have  
2       thousands of trials around the country against a Debtor that  
3       admitted on the first day that it's no longer contesting  
4       liability.

5               It is just the insanity -- or, I shouldn't say  
6       that -- the idea that this is what's being advocated at this  
7       point, right here, at the last minute of the confirmation  
8       hearing, I think speaks volumes.

9               THE COURT: Well, look, I think... I want to say  
10       this diplomatically. There have been times in this case  
11       where the high quality of the lawyers has actually not been  
12       a good thing, because lawyers who are really creative and  
13       thoughtful sometimes come up with ideas that maybe seem well  
14       in the shower, but actually don't make any sense. And I  
15       just...

16              Look, Mr. Goldman, your clients have made some  
17       good points going to the merits of the Sackler settlement.  
18       That's where the focus should be, not on something like  
19       this. This is just not constructive. So, I would hope the  
20       parties would continue to discuss the former, and not burden  
21       this case with the latter.

22              MR. GOLDMAN: I hear you, Your Honor.

23              THE COURT: Okay. All right. Mr. Underwood, I  
24       don't know if you had a comment on the release language, or  
25       you just...

1 MR. UNDERWOOD: Yes. I have a very quick comment,  
2 Your Honor, that I want to raise. We have a provision in  
3 the plan. It's very straightforward as well. We have a  
4 provision in the plan that regards excluded claims. There  
5 is a portion of that provision that addresses Canadian  
6 claims, or Canadian claims against Purdue Canada.

7 We now have language in that provision that says  
8 that non-opioid actual misconduct claims are effectively, I  
9 guess, released. And this is --

10 THE COURT: No, that's what we've just been  
11 talking about, so I wouldn't worry about that.

12 MR. UNDERWOOD: Okay. And the second aspect of  
13 that, very quickly, Your Honor. My understanding is -- and  
14 I did ask the Debtors' counsel about this last evening, or  
15 this morning -- provision 11.1(e) would then suggest that if  
16 there's any provision such as the non-opioid actual  
17 misconduct claim in the excluded claim, we would have to  
18 come back to the United States to get approval. It seems a  
19 little untoward that the Provinces at this point would have  
20 to come to Your Honor in order to bring, you know, a federal  
21 conveyance action against a Canadian entity.

22 I just want to put that on the record, make sure  
23 the Debtor understood where I was coming from.

24 THE COURT: No. Look, first of all, claims  
25 against the Canadian entity would have to be for fraudulent

1 -- I don't think there's any release of a fraudulent  
2 transfer claim against the Canadian entity in this plan.

3 MR. UNDERWOOD: Okay. I'm not -- perhaps it's not  
4 a release. But what this seems to say is -- and I don't  
5 want to delay this further, but -- a claim that is not based  
6 upon conduct of the Debtors, including opioid-related  
7 activities of the Debtors, and that effectively -- or any  
8 non-opioid actual misconduct claim.

9 So I would presume that any Canadian creditor  
10 could argue in Canada that the officers, directors,  
11 Sacklers, owners, whomever, have left the Canadian entity  
12 with unreasonably small capital. That, to me, would be the  
13 type of claim that may be a non-opioid claim that could not  
14 then be brought.

15 THE COURT: Again, but I want to be clear, if it's  
16 just against these third parties because they are an  
17 employee or officer of the Debtor, which would be, I guess,  
18 the transferee, then, yeah, they would have to come back  
19 here if there's any question about that. It would have to  
20 be based on their own independent conduct. So, for example,  
21 if they were a transferee of the Canadian company, then you  
22 wouldn't have to come back here.

23 MR. VONNEGUT: Your Honor, may I address this  
24 point? I think I should be able to clear up some confusion.

25 THE COURT: Okay.

1 MR. VONNEGUT: So, the gatekeeping function that  
2 Mr. Underwood is referring to in 11.1(e). That only applies  
3 to non-opioid actual misconduct claims, which are their own  
4 prong under excluded claims. The claims against the  
5 Canadian entity that are not tied to the Debtor, those are  
6 separately excluded claims, and there's no gatekeeping  
7 function if he's pursuing those claims.

8 THE COURT: No, but his point was a different one,  
9 which is if the Debtor or a released party was being sued  
10 for having received a fraudulent transfer by the Canadian  
11 company, whether they would have to -- the Plaintiff would  
12 have to come to this Court as a gatekeeping mechanism to  
13 proceed.

14 And this should be able to be drafted so that the  
15 gatekeeping mechanism doesn't apply to clearly independent  
16 claims such as that, where if board member X received  
17 \$100,000 as a gift from Purdue Canada, he wasn't a board  
18 member of Purdue Canada, didn't do anything for Purdue  
19 Canada, was just a -- you know, they decided to give him a  
20 gift, and Purdue Canada was insolvent. If under applicable  
21 fraudulent transfer law in Canada, that would be a  
22 fraudulent transfer law, I don't think you should have to  
23 come to this Court to sue that board member.

24 MR. VONNEGUT: Understood and agreed, Your Honor.

25 THE COURT: Right. So, on the other hand, if

1 Purdue Canada is suing the board member because she was a  
2 board member of Purdue when Purdue got a fraudulent  
3 transfer, you would have to come to the Court, because if  
4 the only basis for the lawsuit is -- or the basis for the  
5 lawsuit, or a basis for the lawsuit, is that she was just a  
6 board member. And that's a veil-piercing claim, and the  
7 creditors -- those types of claims are subject to the  
8 discharge, the Debtors' discharge, because you're just  
9 trying to do a backdoor to get at the Debtor through the  
10 insurance and through the former officer or director.

11 Okay. All right. Anything else?

12 MR. HUEBNER: Your Honor, one very last thing from  
13 the Debtor. As Your Honor noted last week, there are  
14 extraordinary letters and other filings on the docket, and  
15 actually, we just wanted to echo the courage that it takes  
16 to tell stories, and specifically to come to court as a non-  
17 lawyer is extraordinary. Those are things that all of us  
18 weigh and worked on, and we read many of those in working on  
19 all this.

20 We (indiscernible) for many parties. I think that  
21 we all owe the Court and chambers -- whichever way the  
22 confirmation hearing ends and whatever order is issued,  
23 we're all aware that we have dumped thousands and thousands  
24 of pages on the Court. And I think that -- you know, I just  
25 wanted to note that as we move towards the closing of the

1 confirmation hearing, in probably the most difficult Chapter  
2 11 case in history in terms of what is at stake, in terms of  
3 what was at stake, in terms of the national health issues  
4 and the impact of the crisis. And it seemed odd to end the  
5 hearing without some recognition of the just extraordinary  
6 nature, in every possible way, of these proceedings.

7 THE COURT: Okay. Well, certainly I want to thank  
8 the Clerk's office.

9 MR. HUEBNER: Yes. Including certainly that the  
10 Zooms for hundreds of people and the accessibility in the  
11 (indiscernible). So I won't belabor the record. It just  
12 felt appropriate to say something, given what we've all been  
13 working on together.

14 One last thing, Your Honor. There are obviously  
15 still some documents to be finalized. Those things are  
16 moving along at warp speed and the emails are being  
17 exchanged. Obviously, we're aware that those things have to  
18 be done and on file prior to entry of the confirmation  
19 orders and the like. Obviously, Your Honor gave some pretty  
20 clear guidance on some of the restructuring issues within  
21 the last hour, which we will attend to; the shareholders  
22 settlement agreement, in addition to the representations we  
23 just talked about, about not letting anyone add any further  
24 parties.

25 So those things will be hitting the docket in

1 revised forms as fast as we humanly can get the parties sort  
2 of shepherded together to do that.

3 I see Mr. Troop has come on (indiscernible) I  
4 assume that is not an accident, since he is quite nimble in  
5 Zoom and appears, I think, only when he plans to. So let me  
6 ask him what he wants to talk about, and maybe that will be  
7 what brings us home.

8 MR. TROOP: Well, thank you very much, Mr.  
9 Huebner. Your Honor, Andrew Troop, for the Nonconsenting  
10 States.

11 Your Honor, I actually don't want to divert at all  
12 from the (indiscernible) truly heartfelt comments by the  
13 Court and Mr. Huebner with respect to the individuals in  
14 this case. I think it's something that all of us who don't  
15 represent individual victims (indiscernible) that we all  
16 share, and our admiration for the two victims who spoke  
17 (indiscernible).

18 But do we have some process things that we have to  
19 get to, and Mr. Huebner touched on them. And we just need  
20 to make sure that we, at the appropriate time and in the  
21 appropriate way, do not lose sight of the issues that remain  
22 unresolved and may be subject to debate with regard to how,  
23 for example, the Sackler settlement is resolved.

24 Your Honor, this afternoon during the hearing,  
25 Your Honor, the Debtors filed a revised perspective



1 injunction for NewCo, where there is an issue that is  
2 identified (indiscernible) open, and we just need to manage  
3 that process and want to do so in a way that's efficient for  
4 the Court. And so we will continue to work on that with the  
5 Debtors.

6 But this is a complex case with lots of threads  
7 still untied, and we just need to make sure that we don't  
8 lose sight of that.

9 THE COURT: Okay. Fair point. I've told the  
10 parties that I intend to rule Friday morning at 10:00. I  
11 intend to give you a bench ruling. As you know, I believe  
12 it's important in cases large and small to move the matter  
13 promptly, after having heard the evidence. And given my  
14 calendar, that's the best way to do it. As I often do with  
15 a lengthy bench ruling, I'll go over the transcript, and I  
16 may edit it, although I won't change it in terms of the  
17 substance. But I think it's important for the parties to  
18 get that ruling and know that they're going to get it on  
19 Friday morning.

20 However, if the parties, as I have encouraged them  
21 to do, will reach some form of agreement, either among  
22 themselves or with the efforts of Judge Chapman as mediator,  
23 they can let me know before I give that ruling, if they want  
24 to circulate it, socialize it, make sure everyone  
25 understands it. I won't be offended at all by that. In

1 fact, I'll encourage you, as I have encouraged you, to  
2 continue that work.

3 As far as other loose ends are concerned, if they  
4 are truly loose ends, I guess I will have to deal with them  
5 after I give you my ruling, which the parties have to  
6 realize will in some measure give me a fair amount of  
7 control over the outcome, if they can't reach an agreement  
8 themselves, because the issue, almost by definition, will  
9 not be so important that it would hold up confirmation.  
10 Rather, it's just an issue that needs to get resolved one  
11 way or the other, and of course, I would rather the parties  
12 resolve it on their own, as I expect they would do. But if  
13 they can't, I guess we'll deal with that after my ruling and  
14 as part of the process of submitting the confirmation order.

15 I won't require the order to be formally settled  
16 if I grant confirmation. But I will want to make sure the  
17 parties have sufficient time to read any changes to it,  
18 including -- you know, obviously, as I told Mr. Anker, he  
19 would have time, everyone else falls in that boat too.

20 So, I want to thank all the parties. We covered  
21 an extraordinary amount of ground in six days of trial and  
22 two days of oral argument. We could not have done that  
23 without the parties working very hard to streamline the  
24 trail efficiently, which I believe by and large they did.

25 And I also want to thank all of the lawyers, some

1 of whom I have made some gruff comments to. But that is no  
2 reflection on the lawyers themselves, but simply to let the  
3 parties know my views on that particular issue, which  
4 unfortunately, when you're on Zoom, I found the Court needs  
5 to be more expressive about than if you're there in person.  
6 I'm not quite sure what human chemistry leads to that  
7 result, but it's true, based on over a year's experience now  
8 in handling hearings remotely. So I hope no one took that  
9 personally. It really went to the argument, and not the  
10 lawyer.

11 So, thank you all, and I'll see you all again on  
12 Friday morning at 10:00.

13 (Whereupon, these proceedings were concluded at  
14 6:03 PM)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski  
Hyde

Digitally signed by Sonya Ledanski  
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Date: August 26, 2021

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LacWpurO

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 In re  
5 PURDUE PHARMA BANKRUPTCY APPEALS

21 Civ. 7532 (CM)  
et seq.

6 Oral Argument

7 -----x  
8 New York, N.Y.  
9 October 12, 2021  
10 2:00 p.m.

11 Before:

12 HON. COLLEEN MCMAHON,

13 District Judge

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1           THE COURT: Thank you very much for all of your  
2 filings over the weekend. I particularly thank you for the  
3 document that you filed this morning, identifying the issues  
4 that we need to address, and I'm very happy to address those  
5 issues in the order that you have listed them. OK? That's  
6 fine.

7           Let's say, as a general matter, issues on appeal, we  
8 have a number of appellants. It seems to me that the people  
9 who have filed notices of appeal should identify for me what  
10 their issues are.

11           Let me start by saying this.

12           For me, there is one giant, overarching issue in this  
13 case. It's the Sackler bar order. It's the constitutionality  
14 of the Sackler bar order. It's the statutory authorization for  
15 the Sackler bar order, and that impinges on everything. That's  
16 the big dog here. I am not going to allow the tails of the dog  
17 to wag the dog. The dog is going to get dealt with as fast as  
18 I possibly can do it. I understand there are some collateral  
19 issues on appeal that various parties have raised, but I'm  
20 principally interested in the Sackler bar order issue, and that  
21 presents, as far as I can tell, a pure question of law, about  
22 as pure a question of law as you can get.

23           Let's start with the first party that filed an appeal,  
24 the state of Washington.

25           Go, Mr. Gold.

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1 MR. GOLD: Thank you, your Honor.

2 We have raised what you were describing as the Sackler  
3 release issue as our primary issue on appeal, both with respect  
4 to the injunction and with respect to jurisdiction of that same  
5 bar order. The other principal issue that we've raised on  
6 appeal is the best interest of creditors' test, which also, to  
7 a certain extent, relates to that release.

8 THE COURT: OK. Who has the next number in sequence?  
9 Who is 21 Civ. 7585? Do you know your case number?

10 I guess you don't know your case number.

11 MR. GOLD: Your Honor --

12 THE COURT: District of Columbia's not here. OK. Not  
13 here.

14 Who is next?

15 Next is 7961, and that would be Grand Prairie. And  
16 7962 is the Cree Nation, and then the U.S. trustee.

17 MS. LEVENE: Thank you, your Honor.

18 Your Honor, we've submitted our list of issues on  
19 appeal. I think without, you know, waiving any specific issue  
20 or argument, it is fair to say that everything ties back to  
21 what we see as the (inaudible) nondebtor release and I keep  
22 seeing a glimpse of our arguments with the emergency motion to  
23 stay We think it's impermissible based on the due process  
24 clause.

25 THE COURT: I know.

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1 MS. LEVENE: OK.

2 THE COURT: Believe me. I've read it all. OK?

3 Great. After that, we have two appeals filed.

4 MS. LEVENE: Yes, we do, your Honor. One appeal is of  
5 the confirmation order. The other appeal is the advance order  
6 authorizing that funding.

7 THE COURT: Right.

8 MS. LEVENE: Skip ahead, we believe we can consolidate  
9 those two separate appeals.

10 THE COURT: OK.

11 MS. LEVENE: And I think they all do tie back to the  
12 release.

13 THE COURT: It may all tie back to the release.  
14 Right. OK.

15 State of Maryland.

16 MR. EDMUNDS: Yes, your Honor.

17 We have essentially the releases, your Honor, and the  
18 validity of the channel injunction and all of the subsidiary  
19 issues that are related to that as subordinate issues under  
20 that heading, and also the best interests issue, which relates  
21 to them too.

22 THE COURT: OK.

23 Connecticut, I assume, is the same as Washington.

24 MR. GOLDMAN: Yes, it is, your Honor.

25 I would just add that there was an issue listed about

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1 the bankruptcy court here misapplying the *Metromedia* factors.

2 THE COURT: That's part of the same thing.

3 MR. GOLDMAN: I would agree. I was just getting more  
4 specific, your Honor.

5 THE COURT: No. It's all part of the same thing.

6 MR. GOLDMAN: Agreed.

7 THE COURT: OK.

8 California.

9 MR. ESKANDARI: California agrees with your Honor that  
10 the Sackler release is the big dog here.

11 THE COURT: Good. OK.

12 Delaware, anything different?

13 MR. GOLD: Nothing different for Delaware, your Honor.

14 THE COURT: Right. OK. And Rhode Island.

15 MR. GOLD: Same, your Honor.

16 THE COURT: Oregon. Is Oregon even here?

17 Fine.

18 MR. GOLD: They're not here, but they have the same --  
19 we've coordinated with them and they have the same as well.

20 THE COURT: OK. Terrific.

21 MS. LEVENE: Your Honor, there are some *pro se*  
22 appeals, and so I don't know --

23 THE COURT: That's not the first item on the list.  
24 That's item four on the list.

25 MS. LEVENE: I just didn't know what issues those were

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1 going to raise.

2 THE COURT: I have no idea. They'll be dealt with  
3 when we deal with them. I would rather imagine that most of  
4 them at least have something to do with the Sackler release  
5 issue. They may have other matters that they raise as well,  
6 but I'd be surprised if they didn't mention the Sackler release  
7 issue.

8 OK. I have a motion from United States trustee, which  
9 I understand, as a technical matter -- this is on the identity  
10 of the appellees, which I understand, as a technical matter,  
11 the United States trustee is raising the issue of who  
12 constitutes an appellee, and I agree -- by the way, I've read  
13 the briefs on both sides. And I agree with the United States  
14 trustee that as a technical matter, the appellees in this case  
15 are the people who litigated the Sackler issue below. And so  
16 if it's not in your brief below and you didn't rise to speak to  
17 that particular issue below, you're not an appellee.

18 Now, the reason I found the issue kind of weird is  
19 what makes you think I wouldn't just listen to these other --  
20 the unsecured creditors committee is in, the governmental and  
21 other contingent litigation committee is in. What makes you  
22 think I'm not going to grant like that a motion for amicus  
23 status?

24 MS. LEVENE: Your Honor, we have never opposed it.

25 THE COURT: And what's the difference?

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1 MS. LEVENE: Your Honor, we have, as we've said all  
2 along that we would consent to amicus participation, and we  
3 gave broad notice when we sought our notice of appeal so that  
4 people could seek to intervene or participate on any case they  
5 wish. So we do not oppose amicus status, and we never have.

6 THE COURT: 1109(b) is a nifty little statute that  
7 says absolutely nothing about who is a party on appeal, and  
8 that is why I agree with the United States trustee that if you  
9 litigated below the issues that are raised on the appeal,  
10 you're an appellee, and otherwise you're a party who should be  
11 heard. OK? So I think that anybody in this room, which I  
12 think is, maybe, one or two committees, who falls into that  
13 status can make a pretty pro forma, one-page motion, and assume  
14 that I would grant it. OK?

15 Again, understand I'm becoming familiar with the  
16 record here, but odd as this is to say, this is not about  
17 the -- the core issue here is the Sackler release issue, and  
18 that does not turn, in my head, on the evilness of the Sacklers  
19 or the lack of evilness of the Sacklers. It turns on whether  
20 this is constitutional, whether this is statutorily authorized.

21 Judge Drain, God bless him. First of all, I want to  
22 say on the record in this courtroom that that man has driven  
23 himself to distraction for you folks and done a brilliant job.  
24 There is no way I could have come up with, let alone read into  
25 the record that fast after that trial, that opinion, given with

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1 all those issues. It was just an amazing tour de force art of  
2 judging, and he's to be commended for it, and I do. And I want  
3 that on the record. OK?

4 But I have to whittle this down to what's really the  
5 juice. OK? And we all know what the juice is. There's never  
6 been a case like this before: I've read dozens and dozens of  
7 cases. There is no case that has facts like this. *Drexel* does  
8 not have facts like this. *Metromedia* does not have facts like  
9 this. The issue is, is it constitutional; is it statutorily  
10 authorized? And then we have the *Metromedia* factors, which  
11 obviously the state of the record plays into that. But that's  
12 the juice here. OK? That's what we're going to resolve. At  
13 least we're going to resolve it if you're here, which is  
14 another question, but that's down the list.

15 MR. SHORE: Your Honor, may I be heard on behalf of  
16 the individual victims?

17 THE COURT: Yes, Mr. Shore.

18 MR. SHORE: Just briefly, first to address the issue  
19 of participation today, we can certainly get a motion on file,  
20 but to the extent we're going to be addressing the stay --

21 THE COURT: Everybody in this room is participating  
22 today. OK?

23 MR. SHORE: And second, the difference between amicus  
24 status and appellee can be a real one, first of all, in  
25 connection with any motion, but second, and I'll just digress



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1 for a moment. Our group is 65,000 or essentially half of the  
2 individual victims.

3 THE COURT: OK. Did you litigate the issue below?  
4 Can you point me to something that shows you raised that issue,  
5 the issue, below?

6 MR. SHORE: There are several issues that are raised  
7 by this appeal that come up. One is what was mentioned before,  
8 which is the advances order, which is on appeal and which will  
9 be put in.

10 THE COURT: Maybe they'll be stayed by the end of the  
11 week.

12 MR. SHORE: Right, but to the extent issues come up  
13 with that, we did participate on that.

14 THE COURT: Great. Anything you're participated in  
15 you're obviously a part of.

16 MR. SHORE: Sure.

17 THE COURT: 1109 does that for all. I'll grant you  
18 that. 1109 goes that far.

19 MR. SHORE: Right.

20 Then second, within our group are 35,000 people who  
21 did not vote on the plan and several hundred who voted "no" on  
22 the plan.

23 THE COURT: Understood. I understand that there are  
24 thousands upon thousands of people who either voted "no" or  
25 didn't vote at all.

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1 MR. SHORE: Right.

2 THE COURT: Understood.

3 MR. SHORE: Right.

4 THE COURT: That certainly gives you the right as an  
5 amicus to advance their interests. OK? It does.

6 MR. SHORE: OK. Maybe it's a matter of semantics.

7 THE COURT: To me, I think it's a matter of semantics.  
8 The U.S. trustee had this statement, We will allow you to be an  
9 amicus as long as you limit yourself to this and that. I  
10 didn't say that.

11 MR. SHORE: OK.

12 THE COURT: You're an amicus. You represent the  
13 interests of your people.

14 MR. SHORE: Fine.

15 Just to be clear, we do have definitive views with  
16 respect to the U.S. trustee's assertion of our members'  
17 constitutional rights with respect to the third-party releases,  
18 and so we'll just address that whether it's an amicus or an  
19 appellee, your Honor.

20 THE COURT: Whether you're a one or the other, you  
21 will put those views in front of me.

22 MR. SHORE: Thank you, your Honor, very much.

23 THE COURT: I don't want anybody not to be heard. OK?  
24 There are a lot of people here who wouldn't technically qualify  
25 as appellees, but they want to be heard.

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1 MR. SHORE: Thank you, your Honor.

2 THE COURT: Yes, sir.

3 MR. WEHNER: Your Honor, if I could be heard briefly  
4 on the question of appellee status?

5 THE COURT: All you have to do is point me to what  
6 is -- send me a one-page motion that says I can prove that I  
7 argued this issue below.

8 MR. WEHNER: August 23, the transcript is at 118:10.

9 THE COURT: I don't have the transcript.

10 MR. WEHNER: Well, I understand. We'll send it to  
11 your Honor.

12 THE COURT: Thank you.

13 MR. WEHNER: We argued the release issue. We are  
14 appellees on all issue.

15 THE COURT: Fine. Great. If you can prove that,  
16 great. Phenomenal. Terrific. I told you what I thought about  
17 the U.S. trustee's motion.

18 MR. WEHNER: Thank you, your Honor.

19 THE COURT: OK. Item three.

20 MR. PREIS: Your Honor, there is one -- I know you  
21 said the parties that are here. There is one *ad hoc* group,  
22 which is called the Ad Hoc Group of NAS Children.

23 THE COURT: Yes.

24 MR. PREIS: It is on the phone, but they're not  
25 speaking on the phone. They had asked me to make sure that to

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1 the extent this issue arises, that they have the same rights,  
2 and they're not in the room.

3 THE COURT: Truly, a one-page motion to be heard as  
4 amicus, unless they argued it below. If they argued it below,  
5 all they have to do is attach the appropriate pages from the  
6 transcript or their brief.

7 MR. PREIS: Thank you, your Honor.

8 THE COURT: I just have to tell you that as a  
9 practical matter it's not going to make a hill of beans' worth  
10 of difference. It really isn't.

11 OK. What does this mean, coordination/consolidation  
12 of appeals?

13 MR. KAMINETZKY: Good afternoon, your Honor.

14 Your Honor, we just heard there's 15 or 16 differing  
15 appeals. What this item is asking is that we could make some  
16 sense out of the chaos and have a single record on appeal, a  
17 single briefing schedule, a single date for oral argument.

18 THE COURT: Oh, yeah.

19 MR. KAMINETZKY: Permission to file an omnibus reply  
20 in opposition so that you're not reading 16 different --

21 THE COURT: Absolutely, positively.

22 MR. KAMINETZKY: OK.

23 THE COURT: Whatever will expedite this. Of course,  
24 it should be consolidated. We only need one record on appeal.

25 MR. KAMINETZKY: With respect to designations and

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1 counterdesignations.

2 MS. LEVENE: Your Honor, before we move on to the next  
3 item --

4 THE COURT: I want to move on, but he doesn't start  
5 talking.

6 MS. LEVENE: I'm sorry. I thought consolidation issue  
7 was a couple items later.

8 MR. KAMINETZKY: No, it's this. Because each appeal  
9 has its own time clock, we have 16 rolling designations and  
10 counterdesignations that are making scores of associates crazy  
11 back in my office, so what we'd like to do is have one omnibus  
12 designation.

13 THE COURT: Pick a date.

14 MR. KAMINETZKY: Exactly. So we could work that out,  
15 and if that's OK with your Honor --

16 THE COURT: You should have worked it out by now. If  
17 I haven't made it clear, I'm going to move this thing.

18 MR. KAMINETZKY: Good.

19 THE COURT: OK? I'm going to move this thing.  
20 Assuming it's still here by the end of the week, I'm going to  
21 move this thing.

22 MR. KAMINETZKY: Awesome.

23 THE COURT: So work it out.

24 MR. KAMINETZKY: Good.

25 THE COURT: Now, the U.S. trustee wanted to be heard

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1 on this issue.

2 MS. LEVENE: Yes, your Honor.

3 All I was going to say about consolidation is we just  
4 want to make sure things are moving along on an expedited  
5 basis, and we had proposed a faster schedule than some other  
6 people in the room. That was our only concern about  
7 consolidation, is if other people with different issues --

8 THE COURT: Well, if we have to thrash out the dates  
9 here and now, I'm happy to do it.

10 MR. KAMINETZKY: Your Honor, that's item five, and  
11 we'll get there in probably about 43 seconds.

12 THE COURT: Right.

13 *Pro se* appeals, what do I need to know about the *pro*  
14 *se* appeals?

15 MR. KAMINETZKY: Your Honor, only that we're just  
16 asking that these appeals be subject to the same schedule. Let  
17 me just give you a little background on the *pro se* appeals. I  
18 don't know if anyone is on the line.

19 Two of the *pro se* appeals -- those are Marisa Maria  
20 Ecke and Elaine Isaacs -- are basically focused on the same  
21 issue as the other appeals as your Honor has, you know,  
22 third-party release.

23 THE COURT: Sackler release, right.

24 MR. KAMINETZKY: Right.

25 There's one additional *pro se* appeal of a Mr. Ronald

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1 Bass. He has slightly different issues, claims against the  
2 debtors and the state of New Jersey under the Americans With  
3 Disabilities Act. While this is different in kind, we just ask  
4 that all of these *pro se* appeals, including Mr. Bass, proceed  
5 on the same schedule.

6 THE COURT: I have no problem with that.

7 MR. KAMINETZKY: OK. I guess that was 48 seconds.

8 So now we're up to --

9 THE COURT: Wait a minute. The U.S. trustee wants to  
10 be heard.

11 MS. LEVENE: I just wanted to footnote that last I  
12 checked, two of those appeals hadn't been docketed yet, so I  
13 just wanted to alert you to that.

14 THE COURT: OK. Well, presumably they'll get on the  
15 docket today. It was a holiday weekend.

16 MS. LEVENE: Yeah, but I don't think those individuals  
17 would have had notice of this hearing to be here.

18 THE COURT: OK.

19 OK. I have item five as proposed schedules.

20 MR. KAMINETZKY: Yes, your Honor.

21 What we did is we included in the chart or in the  
22 items list that we provided last night or early this morning  
23 the bids and the asks. There's three proposals. The good news  
24 is they're pretty much --

25 THE COURT: Pretty close.

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1 MR. KAMINETZKY: They're pretty close. It's the U.S.  
2 trustee's, the appealing states' and the appellees'. You'll be  
3 shocked to hear that we believe that the appellees' proposed  
4 schedule is the most reasonable. It is quick. It is fast.  
5 You have the file brief going in November 19. You have oral  
6 argument, at your Honor's discretion and leisure, (inaudible)  
7 after November 22. And as you'll hear in detail when we move  
8 on to the TRO and the stay, that's well before any possible  
9 emergence date with respect to the plan of reorganization.

10 THE COURT: When is the sentencing?

11 MR. KAMINETZKY: The earliest it possibly could be --  
12 we don't have it scheduled yet -- is December 1.

13 THE COURT: Who is the sentencing judge?

14 MR. KAMINETZKY: It's in front of the District of New  
15 Jersey. I'm not sure the name of the judge, your Honor. I  
16 apologize.

17 MS. MONAGHAN: I believe it's Claro.

18 MR. KAMINETZKY: Claro.

19 THE COURT: Claro?

20 MS. MONAGHAN: I believe that's it.

21 THE COURT: A new judge.

22 MS. MONAGHAN: District of New Jersey, your Honor.

23 THE COURT: Not a name I know.

24 MR. KAMINETZKY: Your Honor, the earliest we could  
25 possibly emerge under the agreement is December 8, so obviously



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1 your Honor's going to rule when your Honor rules, and I'm not  
2 here to tell your Honor how quickly your Honor has to rule, but  
3 we believe that the appellees' schedule is fast. It gives  
4 people adequate time, given that these issues have been chewed  
5 on and rechewed on down below, and we think the appealing  
6 states' schedule is just too long and we want indeed to get  
7 this moving.

8 THE COURT: OK. And the U.S. trustee wants a slightly  
9 shorter schedule.

10 MS. LEVENE: Your Honor, I believe our schedule is  
11 roughly the same, just starting earlier, and that's because we  
12 want to move this along quickly.

13 THE COURT: It's like four days earlier.

14 MS. LEVENE: Right.

15 THE COURT: Usually when I have bids and asks, there's  
16 about a three-week to three-month difference.

17 MS. LEVENE: No.

18 THE COURT: Four days is --

19 MS. LEVENE: They're very, very close.

20 I had a couple things I wanted to add regarding the  
21 schedule. One of the things is for amicus participation, we  
22 would like to get amicus briefs filed at the same time as the  
23 primary party briefs --

24 THE COURT: Agreed.

25 MS. LEVENE: -- to move them along.

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1 And the other is just a footnote. We want to go  
2 forward on the schedule. We've got a week for reply briefing  
3 here. We assume we're going ahead with the default word limits  
4 under the bankruptcy rules, but we wanted to reserve our right  
5 on reply to either move for additional pages or a little bit of  
6 additional time if we're faced with six, seven, or eight  
7 responding briefs that we need to reply to.

8 THE COURT: OK.

9 MR. KAMINETZKY: Your Honor, that's a fair point. If  
10 I may? If your Honor could be flexible with respect to pages,  
11 because --

12 THE COURT: Oh, please.

13 MR. KAMINETZKY: -- respond.

14 THE COURT: Please. Please forget about the page  
15 limit, but don't tell me stuff I know.

16 MR. KAMINETZKY: Understood.

17 THE COURT: OK? You can eliminate the boilerplate and  
18 just get to the meat of it, but I genuinely want helpful  
19 briefs, and for me, helpful briefs are briefs that discuss and  
20 distinguish, or whatever the opposite of distinguish is, the  
21 relevant cases. I sit in the Second Circuit. You know that.

22 So, for example, to the United States Attorney,  
23 whether I agree with you or not, I can't tell the Second  
24 Circuit that *Metromedia* is wrong. There are many interesting  
25 arguments that can be made under *Metromedia*, and I could, in

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1 fact, tell them if I thought it was wrong. I just couldn't  
2 have ruled on them. So I'm particularly interested in Second  
3 Circuit precedent for this.

4 This is how I train my law clerks. A helpful brief, a  
5 helpful opinion, is one that doesn't mention a case and then  
6 put some quote in a parenthetical. It's a brief that tells me  
7 what the case is about, what the holding in the case was, and  
8 why the relevant language matters. It's a brief that says  
9 we're on all fours with this, or our case can be distinguished  
10 in the following way. I really don't need to give you guys  
11 brief-writing lessons. I'm assuming I've got the best of the  
12 best of the best in this room, but that's a brief that's  
13 helpful to me.

14 I'm already reading cases like crazy.

15 MR. KAMINETZKY: Your Honor, just to respond to the  
16 U.S. trustee, we're all kind of dancing as fast as we can, and  
17 we're going to have 16 appeals to, or 16 possibly briefs, maybe  
18 some of them are consolidated.

19 THE COURT: You're going to write an omnibus brief on  
20 the --

21 MR. KAMINETZKY: Of course. Obviously we're going to  
22 do that to make it easier for your Honor, but I don't think the  
23 U.S. trustee needs another week or whatever it is for the  
24 reply. We've all done this before, so your Honor, I guess  
25 that's where we are. We have these three proposals.

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1 THE COURT: I'm trying to figure out what you agreed  
2 with on the U.S. trustee's proposal.

3 MR. KAMINETZKY: Oh.

4 THE COURT: That's where you started out.

5 Let me hear from the states.

6 MR. GOLDMAN: Yes, your Honor.

7 We're jointly representing five states, and we're  
8 seeking to coordinate to file a unified brief or at least one  
9 in which the other appealing states could adopt, in whole or  
10 substantially in part. They are Maryland, California, Oregon,  
11 and the District of Columbia. Each of those states has their  
12 own appellate team that we're going to have to coordinate with.

13 THE COURT: And you're going to have to work real  
14 fast.

15 MR. GOLDMAN: Your Honor, we're prepared to do that.  
16 We just think that what we have proposed is the most reasonably  
17 expeditious timetable that we can manage. We can't just dust  
18 off our briefs that were submitted below. We weren't given the  
19 opportunity to reply to the objections that we received in  
20 response to our objections.

21 THE COURT: Then you might want to start there.

22 MR. GOLDMAN: There is a record that we have to deal  
23 with, an extensive record, and a 157-page bench ruling from  
24 Judge Drain that has citations and extensive reasoning that  
25 really wasn't quite articulated in the briefs below. So we

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1 have that to deal with. I think that 17 days from today is not  
2 an unreasonable, and it's not an unduly lengthy period of time  
3 to expect the states to react to this, to raise issues that are  
4 before the Court here. So we would maintain that we stick with  
5 our schedule, which still gets us into early September by the  
6 time -- or mid-September.

7 THE COURT: Early December.

8 MR. GOLDMAN: Yes.

9 THE COURT: OK. Here's my constraint. My constraint  
10 is that I'm starting a two-defendant criminal trial on December  
11 7, so I have to have the argument before that. That's my  
12 concern, and it's not going to go away.

13 MR. GOLDMAN: Your Honor, I could suggest as a  
14 compromise position that we could just cut back the appellees'  
15 reply brief to November 12. They still have almost two weeks  
16 to respond to our opening brief.

17 MR. KAMINETZKY: Your Honor, may I just make a point?

18 The judge ruled on September 1. We've been sitting on  
19 this. September 1 is now almost two months ago. I appreciate  
20 everything --

21 THE COURT: No, it's not. September 1 is a month and  
22 a half ago.

23 MR. KAMINETZKY: Six weeks ago. You're right.

24 THE COURT: Be fair.

25 MR. KAMINETZKY: It's six weeks ago.

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1 So yes, there is an extensive record.

2 THE COURT: But everybody should be working on their  
3 briefing all along.

4 MR. KAMINETZKY: Everybody's been working on it.  
5 Right.

6 THE COURT: And attorneys general, God bless them, are  
7 as slow as molasses, and I feel for you in this regard. I  
8 understand the difficulties that you have with your clients. I  
9 don't have your clients.

10 Here's what I would propose. I actually do like the  
11 appellees' schedule with the oral argument for scheduled for  
12 the 30th of November, but if the states find that they're  
13 having difficulties with their clients, I'll be happy to give  
14 you a few extra days, if that happens. It's all going to be  
15 the same anyway. And if the appellants, particularly the U.S.  
16 trustee, seem to have issues with the 19th, I'll be happy to  
17 give you a few days, over the weekend. That will, I point out,  
18 allow you all to have a better Thanksgiving weekend than I will  
19 have.

20 MR. HUEBNER: Your Honor, just one very small point?

21 There are a huge number of states on the appellee side  
22 also, many multiples, frankly, of those than on the appellant  
23 side, and just in the interests of fairness, to be clear, there  
24 are 38 states who support the plan.

25 THE COURT: I'm aware of that. There are 38 states

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1 that support the plan. Tell them they'll have overnight to  
2 comment on the brief. It's time for you guys to tell your  
3 clients and the other, the states, if they want to comment on  
4 the brief, fine. They've got 24 hours. That's what the judge  
5 says.

6 MR. HUEBNER: Understood.

7 THE COURT: All right? You can blame it on me. It's  
8 not you. It's me.

9 I'm being told by Mr. O'Neill -- this is Jim O'Neill,  
10 my senior law clerk; he runs this operation, and I'm being told  
11 that people need to speak up and be very clear, because we have  
12 folks on the phone.

13 OK. I'm adopting the appellees' proposed schedule  
14 with the understanding that anybody can ask for an extension of  
15 three or four days, and that's fine. I'm setting oral argument  
16 for November 30, 10 a.m.

17 Block the day. I hear you guys talk a lot. When I  
18 told Judge Drain that I'd entered the TRO, he told me you talk  
19 a lot.

20 Yes, sir.

21 MR. GOLD: Your Honor, just to clarify, to make sure  
22 that if we are going to be requesting three or four additional  
23 days at some point, that would be done by means of an  
24 ECF-letter; is that the proper way to do it?

25 THE COURT: It would actually be by ECF notice of

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1 motion, but that's all it has to be, an ECF notice of motion.

2 MR. GOLD: Thank you, your Honor.

3 THE COURT: But try to adhere to the schedule.

4 Yes, sir.

5 MR. PREIS: Your Honor, I just wanted to clarify one  
6 thing, which is if the states ask for a few more days to submit  
7 their opening brief, then obviously those extra days get added  
8 on to our response brief timing so we wouldn't get jammed by  
9 their extra days.

10 THE COURT: Sure.

11 MR. PREIS: OK.

12 THE COURT: But I think you can start writing your  
13 brief now.

14 MR. PREIS: I understand.

15 THE COURT: I really think if it were me, if I were  
16 still on that side of the bench, I'd already have a draft of my  
17 brief on appeal. And let's not pretend that you don't.

18 Record designations and providing a record to the  
19 Court, you're going to work that out.

20 MR. KAMINETZKY: Your Honor, just to understand your  
21 Honor's preference, do you want us to start providing your  
22 Honor copies of all the designated exhibits? Do you want us to  
23 wait until the briefs are filed and to see what the --

24 THE COURT: Oh, start shipping them in.

25 MR. KAMINETZKY: OK. And do you like things in hard



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1 copy?

2 THE COURT: I regret to say that I do.

3 MR. KAMINETZKY: OK. And do you want everything  
4 that's designated and counterdesignated?

5 THE COURT: No. I want what's important.

6 MR. KAMINETZKY: OK. May I suggest, then, your Honor,  
7 that we wait to see what exhibits are incorporated into the  
8 various briefs?

9 THE COURT: That's what makes the most sense to me.

10 MR. KAMINETZKY: OK.

11 THE COURT: If it's not important enough to be in your  
12 brief, it's really not important enough. You know that.

13 MR. KAMINETZKY: Agreed.

14 Is there anything your Honor would like now, before  
15 the briefs are filed, that would -- just anything you need we  
16 could give you?

17 THE COURT: I'll tell you what. You know the record.  
18 I don't. If there's something you think I should be looking at  
19 already, other than case law, which I am devouring, feel free  
20 to submit it by, say, next Monday. OK? I'll take a look at  
21 it.

22 MR. KAMINETZKY: Your Honor, would you like all the  
23 briefs down below? Would that be helpful?

24 THE COURT: No.

25 MR. KAMINETZKY: OK.

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1 THE COURT: Because I'll just read the same thing all  
2 over again.

3 MR. KAMINETZKY: We will do that.

4 THE COURT: Great.

5 MR. KAMINETZKY: Moving on to the certification of  
6 direct appeal.

7 THE COURT: Oh, yes. Now, having done all of that,  
8 how many people in this room are supporting that application?

9 OK. Some are, some aren't. Obviously, the bankruptcy  
10 rules are very unusual to us district court judges, so it took  
11 me a while to figure out that Judge Drain had jurisdiction  
12 notwithstanding the fact that you had filed a notice of appeal.  
13 He'll be hearing that on Thursday. He'll do what he's going to  
14 do, and then you have to go to the circuit, and if this all  
15 bypasses me, this will have been lovely. It will have been  
16 nice knowing you. I will certainly ask Chief Judge Livingston  
17 if this works like a three-judge court if maybe I get to be  
18 designated to be on the panel, but who knows. OK?

19 At the very least, it was an education.

20 MR. KAMINETZKY: Your Honor, you saw my (inaudible).  
21 Our only point here was that whatever happens shouldn't delay  
22 what's happening here in court.

23 THE COURT: It absolutely does not.

24 MR. KAMINETZKY: Even if Judge Drain certifies, as  
25 your Honor knows, the Second Circuit then has to agree to take

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1 it.

2 THE COURT: Yes, I know that.

3 MR. KAMINETZKY: They might not even consider that  
4 before your Honor's ruled on this.

5 THE COURT: I know that. Believe me. Until they take  
6 it away from me, it's here.

7 MR. KAMINETZKY: OK. Thank you, your Honor.

8 Wow. We've really done --

9 THE COURT: And by the way, if they take it, they  
10 should take the briefing schedule too.

11 MR. GOLDMAN: Your Honor, before we get to the stay  
12 motion, just to make a note that the appeal of the state of  
13 Vermont has not yet been docketed with the district court, that  
14 they would be one of the appealing states and one of which we  
15 represent, so -- they haven't gotten a number yet, though.

16 THE COURT: OK.

17 MR. GOLDMAN: I don't know how we deal with that.

18 THE COURT: It will be automatically added by the  
19 assignment committee to my docket when there's a number, when  
20 it's docketed. You're here today, so I assume that Vermont's  
21 interests are represented. Vermont is bound by this schedule.  
22 I don't know why it took Vermont so long to decide that it  
23 wanted to file a notice of appeal, but no attorney general gets  
24 to dictate the schedule in my courtroom, and this is a fast  
25 schedule, for all the obvious reasons.

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1 OK. I think we've reached the U.S. trustee's  
2 emergency motion for a stay pending appeal, which has been  
3 joined in by Connecticut, Washington, and Maryland.

4 MR. KAMINETZKY: Your Honor, if I may?

5 THE COURT: No, you may not. It's not your motion.

6 MR. KAMINETZKY: OK.

7 THE COURT: OK.

8 MS. LEVENE: Your Honor, we appreciate the entry of  
9 the temporary restraining order, given the expiration of the  
10 automatic stay, and consideration of the emergency stay motion  
11 today.

12 THE COURT: Well, I am going to give folks a chance to  
13 put in a brief, like in the next 24 hours, but you may as well  
14 argue it now. I'll extend the TRO. There will be a ruling by  
15 Thursday at the end of the day.

16 MS. LEVENE: Thank you, your Honor.

17 Will we have a chance to respond?

18 THE COURT: No. No reply.

19 MS. LEVENE: All right, your Honor.

20 Thank you for allowing us to present this. We view  
21 this as an emergency, and we appreciate your willingness to  
22 engage and rule quickly. As we'll explain, the Court has  
23 jurisdiction to enter a stay pending appeal, and we believe a  
24 stay can be decided on the existing record.

25 THE COURT: I agree.

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1 Next.

2 MS. LEVENE: As you know already, we're committed to  
3 an expedited briefing schedule, and I raise that because the  
4 primary argument that we have heard -- we haven't seen a  
5 written file in response to our request for a stay yet, nor in  
6 the bankruptcy court either. I raise that because the primary  
7 argument in response is concern about delay.

8 THE COURT: There are two arguments. One is you're  
9 not going to succeed on the merits. The other one is the  
10 letter.

11 MS. LEVENE: And so as the delay point, I think the  
12 expedited schedule is quite relevant, and I'll get to that more  
13 in a little bit. We think that the permissibility is  
14 nonconsensual (inaudible) releases.

15 THE COURT: Now I'm starting to lose you. OK? I  
16 can't understand.

17 You know what would be helpful to me?

18 MS. LEVENE: Should I go to the podium?

19 THE COURT: Go to the podium, take off your mask, and  
20 argue this. And please don't tell me what the standards are  
21 for an injunction.

22 MS. LEVENE: All right. Can you hear me all right?

23 THE COURT: Oh, so wonderful.

24 MS. LEVENE: It's nice to be able to speak without the  
25 mask, your Honor. Thank you.

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1           So, in our emergency motion, we asked for a stay  
2 pending a decision on the stay pending appeal, which you have  
3 granted, and we appreciate that. For the stay pending appeal,  
4 we would like a stay pending exhaustion of all appeals, and of  
5 course, we've asked for alternative relief, if you deny the  
6 stay pending appeal, a stay long enough for us to seek relief  
7 from the Second Circuit.

8           On the standards for a stay, we believe we've met  
9 them. Because this does raise very important issues, we  
10 believe we have a likelihood of success on the merits for the  
11 reasons we discussed in our brief, and we don't think it can be  
12 disputed that there are serious questions here on the merits  
13 that raise a fair ground for litigation and the balance of the  
14 hardships, including the harm to the victims who had their  
15 claims eliminated potentially without appellate review on the  
16 merits favor the stay.

17           Your Honor, in one of your orders, you raised a  
18 question about whether you have the power to enter a stay  
19 pending appeal, and you do. I don't know if you still have  
20 that question in your mind.

21           THE COURT: I don't have that question in my mind.

22           MS. LEVENE: OK.

23           THE COURT: I've done some research.

24           MS. LEVENE: I didn't quite hear you.

25           THE COURT: I've done some research.

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MS. LEVENE: All right. So you do have that power.

We think we meet the standard for a stay, and you've read our papers so I'll be brief about the merits arguments. But as I said, there are serious issues here that raise fair ground for litigation. And because these releases violate the due process clause, there was not adequate notice that individuals, victims who are being denied their opportunity to sue the Sacklers and other nondebtors are being deprived of their property interests of these claims against nondebtors without an adequate opportunity to be heard, without compensation and without consent, we think that raises serious due process issues.

We also think these releases are not permitted by the code even as it's been interpreted by the Second Circuit, and we understand that you're bound by the Second Circuit.

THE COURT: Right. I want to hear your argument on that point.

MS. LEVENE: I'm sorry. I'm having trouble hearing you.

THE COURT: I said I'd love to hear your argument on that point.

MS. LEVENE: So, as for *Metromedia*, *Metromedia* actually didn't hold the releases at issue there to be OK. It dismissed the case on equitable mootness grounds, and it didn't address the constitutional issues that we've raised here. And

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1 it talked about the cases that did allow such releases as being  
2 rare cases that met certain conditions which are not met here.  
3 Because these releases are so very broad, they extend far  
4 beyond the persons who would have a claim for indemnity or  
5 contribution, for example.

6 There's not a channeling of the claims. I know the  
7 debtors have talked about there being a channeling of the  
8 claims, but the way the plan documents work is if you have a  
9 claim against the Sacklers or some of these other nondebtors,  
10 it's defined as a channeled claim, but then no compensation is  
11 being paid on that claim, and we think that separates this very  
12 distinctly from some of these cases where claims are channeled.

13 THE COURT: I'm curious about something that needs to  
14 be put on the record. The kinds of claims that we're talking  
15 about, the claims against the Sacklers, the nonderivative  
16 claims, the state law claims, the nondischargable claims, what  
17 are we talking about, and who has standing to assert them?

18 MS. LEVENE: Your Honor, it's very broad, broadly  
19 defined because the cause of action is very broadly defined.  
20 It includes things like fraud, for example, that can't be  
21 discharged. It includes things like defenses and offsets,  
22 which wouldn't be covered by a bankruptcy discharge. And it's  
23 defined in a way that is -- so to compare it, for example, to  
24 524(g), which was at issue in the *Quigley* case and which  
25 applies to asbestos cases --



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1 THE COURT: It only applies to asbestos cases.

2 MS. LEVENE: But just to compare it to that, there,  
3 the liability must arise based on the conduct of the debtor.

4 Here, the release is raised more broadly, where the  
5 debtor conduct should be either a legally relevant factor or a  
6 legal cause, and so you've got what (inaudible) conjunctive of  
7 524(g), where it has to be based on the conduct of the debtor  
8 and the liability must arise by reason of the defendant's  
9 statutory relationship to the debtor. Here, that's all broken  
10 apart. So it doesn't have to be -- the liability doesn't have  
11 to be because of the conduct. We don't really know what  
12 legally relevant factor means here.

13 THE COURT: Your position is that 524(g) isn't  
14 relevant anyway, so who cares?

15 MS. LEVENE: To extent that we're talking about what  
16 derivative liability is, it's a way of contrasting.

17 THE COURT: But isn't your point --  
18 (Indiscernible overlap)

19 MS. LEVENE: Derivative liability. It's not based  
20 just on liability for the debtor's conduct.

21 THE COURT: Right. We're talking about, and I'll use  
22 the phrase, "nonderivative claim." That's your problem, the  
23 release of nonderivative claims, the evil things that the  
24 Sacklers allegedly did. And I'm just curious whose claims are  
25 those? Who has such a claim?

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1 MS. LEVENE: Your Honor, there are a number of  
2 individuals who could have a claim. There are suits. There  
3 are, I think, 400 suits against the Sacklers.

4 THE COURT: But the Sacklers didn't say anything to  
5 any of those people. I'm just trying to figure out what the --  
6 you're the ones who say, and I agree with you, that it's very  
7 difficult to parse the scope of this release, and I'm trying to  
8 figure out what is and what might not be covered. And a fraud  
9 claim requires a misrepresentation of some sort to someone.

10 This is not like *Metromedia*, where the claims that  
11 were being discussed by Judge Jacobs in his disquisition before  
12 he ruled on equitable mootness grounds were claims that the  
13 Kluge family had against the corporation. The Kluges owned  
14 *Metromedia*.

15 This is not like *Drexel*, where we're talking about a  
16 discrete number, like 850 securities fraud claims. They were  
17 all securities fraud claims. Everyone knew what they were.  
18 I'm trying to figure out what are these claims that people are  
19 asserting against the Sacklers or that they would like to  
20 assert against the Sacklers?

21 MS. LEVENE: Yes, your Honor.

22 And you know, to some extent, we don't know because  
23 people were not able to file claims in light of the preliminary  
24 injunction. We do know there have been objections filed to the  
25 plan, and they're the ones that we cited in our brief where

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1 someone who objected had, I believe, a class action complaint.

2 THE COURT: A class action complaint premised on what?

3 MS. LEVENE: Your Honor, I'm afraid I'm not  
4 sufficiently familiar with those details right now.

5 THE COURT: OK.

6 MS. LEVENE: But I believe they wanted, they want to  
7 hold the Sacklers liable for their own actions and their own  
8 conduct.

9 THE COURT: Right. As opposed to their conduct as  
10 officers, directors, managers.

11 MS. LEVENE: As opposed to saying Purdue did this, and  
12 therefore, you're liable because you're a director, but for  
13 their own individual conduct.

14 THE COURT: Other than their conduct as officers,  
15 directors, and managers. OK.

16 OK. Maybe somebody else in the room can enlighten me  
17 a little bit, but you go ahead and argue your motion.

18 MS. LEVENE: And your Honor, of course, we, in  
19 addition to the statutory argument, do think there are  
20 constitutional issues here, including the due process clause,  
21 including the Court's authority to enter these releases under  
22 the bankruptcy clause and as an Article I --

23 THE COURT: You have a Thurgood Marshall argument that  
24 only this Court could do this, but Judge Drain couldn't do  
25 this.

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1 MS. LEVENE: Yes. And there's a piece of that where  
2 an exclusion for certain nonopioid claims where the bankruptcy  
3 court as a gatekeeper functioned, which we think implicates --

4 THE COURT: I'm sorry.

5 MS. LEVENE: There is an exclusion from the release of  
6 these certain nonopioid claims, but for those claims the  
7 bankruptcy court plays a gatekeeper function. They have to be  
8 brought first to the bankruptcy court, which could say, no,  
9 you're not allowed to pursue those claims. And we think that  
10 raises certain issues as well.

11 THE COURT: I see. OK.

12 MS. LEVENE: So, your Honor, we think these are very  
13 serious questions on the merits, and they do present a fair  
14 ground for litigation, particularly as recognized in the *Arnaut*  
15 cases that present these facts and the balance of harms raised  
16 in favor of a stay. Your Honor, as you recognize --

17 THE COURT: Basically, you're balancing the harms, and  
18 the immediacy or close to immediacy of payment is balanced, on  
19 the one hand, against the other extinguishment of claims by  
20 people who have constitutional claims or have common law claims  
21 against the Sacklers under some theory, on the other.

22 MS. LEVENE: Yes, your Honor. We think the complete  
23 elimination of the rights outweighs a delay.

24 THE COURT: A delay of a few weeks or a couple of  
25 months in the great scheme of things.

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1 MS. LEVENE: Yeah, and hope, you know, we want to  
2 obviously have this moving quickly.

3 THE COURT: I know.

4 MS. LEVENE: And we do think that outweighs,  
5 particularly if there's a risk that there would not be  
6 appellate review in the absence of a stay because of equitable  
7 mootness, and to be clear, we don't think equitable mootness  
8 should apply, but it's unquestionably a risk.

9 THE COURT: Yes. It turned out the case I was  
10 thinking of was a statutory mootness case. It was the *Sears*  
11 case. It wasn't an equitable mootness case, but I have  
12 encountered equitable mootness before.

13 When is that being argued in the Supreme Court?

14 MS. LEVENE: You know what? I believe that petition  
15 for certiorari was denied today.

16 THE COURT: You're joking.

17 MS. LEVENE: I'm not joking.

18 MR. HUEBNER: It was denied. One was denied last  
19 week. The other was denied today.

20 THE COURT: Oh, my God.

21 OK.

22 MS. LEVENE: So, we are left to grapple with a  
23 doctrine that we don't think should apply, but the Second  
24 Circuit --

25 THE COURT: Your point is you can never know.

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(Indiscernible overlap)

MS. LEVENE: -- agree with us.

THE COURT: Because who knows where the line is for substantial confirmation.

MS. LEVENE: Yes, and the debtors have said that nothing that's happening now could be a ground for equitable mootness, and you know, we can all agree about that and the Second Circuit may still not agree. And we want to make sure that there's review on the merits in this case. And we don't want to take any risks with that, and we don't think we should get to a point where we're litigating equitable mootness either. The stay is a way to make sure that this case on appeal gets heard on the merits.

THE COURT: OK.

Let me hear from Davis Polk.

MR. KAMINETZKY: Good afternoon, your Honor.

It's truly unbelievable what's going on here, because it seems like we're in an alternate universe. I need to set the record straight.

There's one absolutely critical and, we believe, dispositive fact that the U.S. trustee hasn't told you that I think should frame our discussion and allow us to chart a reasonable path forward, and I appreciate your Honor saying that you'll give us an opportunity to file a brief on the stay point, but that is entirely unnecessary. and let me tell you

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1 why.

2           There is absolutely no emergency here that requires an  
3 immediate stay or a TRO, because there is zero risk -- zero  
4 risk -- of near-term events or actions that could lead to  
5 equitable mootness. In this regard, this chapter 11 case is  
6 quite different than cases that your Honor might have  
7 encountered in the past, where the debtors could emerge by  
8 sending wire transfers or transferring stock. That's not the  
9 point here.

10           Every party in this case knows, because we have told  
11 them, because Judge Drain has said so, because it's spelled out  
12 in black and white in a plea agreement that there is no  
13 scenario where the debtors can emerge until December 8 --  
14 December 8 -- at the earliest.

15           Let me explain.

16           As your Honor's aware, we've heard a little bit about  
17 this Purdue Pharma, one of the debtors in this case, after a  
18 contested hearing entered into a plea agreement with the  
19 Department of Justice to resolve its criminal and civil  
20 investigation. The timing of the effective date of the plan is  
21 tied to the date of the sentencing hearing in the New Jersey  
22 district court.

23           Under the plea agreement, the sentencing hearing is  
24 required to occur 75 days after the debtor's plan is confirmed  
25 and at least seven days before the plan becomes effective.

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1           What does that mean?

2           At least 82 days must elapse between the entry of the  
3       confirmation order and effective date of the plan. So since  
4       the confirmation order was entered on September 17, the  
5       sentencing hearing cannot -- cannot -- occur before December  
6       the 1st and the effective date cannot occur sooner than  
7       December 8. There is absolutely no danger that the debtors  
8       will emerge suddenly, without notice, at an unforeseen time.

9           Now, your Honor's order Saturday night -- now, the  
10      debtors have been laying the complex groundwork to emerge after  
11      sentencing, to secure licensing, to obtain regulatory approval,  
12      setting up new shell companies, and the like. But it's  
13      precisely because this process is protracted that we have a  
14      long period. We baked in a long period between the  
15      confirmation order and this plea agreement. But performing  
16      these ministerial tasks are critical to ensuring that the  
17      debtors will ultimately emerge and become co-effective after  
18      the sentencing once we're authorized to do so.

19          And what does that mean?

20          That means that there's multi-hundred million dollar  
21      distributions to the opioid abatement trust and to the personal  
22      injury compensation trust that we need to start getting the  
23      ball rolling. But we fully understand your Honor's concern.

24          THE COURT: Just talk to me a minute. You're talking  
25      about giving large sums of money, pursuant to the plan, to the



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1 trust during this 82-day interval?

2 MR. KAMINETZKY: Absolutely not. Absolutely,  
3 positively, 100 percent not. And this is what we went through  
4 with Judge Drain in great, you know, detail.

5 All we're doing is we're setting up, doing this  
6 ministerial task of setting up shell corporations. We're not  
7 making any distributions. We're not doing anything that's  
8 irreversible, and that's why Judge Drain found -- and this is  
9 so critical. We had this discussion with Judge Drain. They  
10 moved for a stay in front of Judge Drain, as the rules require.

11 THE COURT: Right. And he put it off until --

12 MR. KAMINETZKY: November 9.

13 And why did he?

14 Your Honor, November 9 is when the stay hearing  
15 occurs. The U.S. trustee is not happy about that. They don't  
16 want to have a full evidentiary hearing, which is required  
17 under the law. They have the burden of proof, and the law says  
18 it's a heavy burden to get a stay. There's going to be  
19 witnesses. We've already exchanged witness lists.

20 THE COURT: Why are there going to be witnesses?

21 MR. KAMINETZKY: Because the key issue is the balance  
22 of harms of a stay or of not a stay, and we have -- and your  
23 Honor, and they're sitting in the courtroom. The balance of  
24 harms isn't even close here. We're talking about depriving  
25 victims, depriving states of abatement funds, but your Honor --

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1 THE COURT: For a few weeks, for a month or two --

2 MR. KAMINETZKY: But --

3 THE COURT: -- in a process that has gone on for many  
4 years.

5 MR. KAMINETZKY: Right.

6 THE COURT: We're not talking about depriving anybody  
7 of anything for a long period of time, except the people who  
8 lose their claims and they're deprived forever.

9 MR. KAMINETZKY: OK. Well --

10 THE COURT: You cannot convince me that a delay of a  
11 month or two is so horrible that it outweighs the possibility  
12 of equitable mootness.

13 MR. KAMINETZKY: Your Honor, that's where I'm getting  
14 to.

15 There is no possibility of equitable mootness between  
16 now and December 8, at the very earliest. The normal process,  
17 as it is the in this -- your Honor knows this well. When your  
18 Honor rules and someone appeals and moves to his first stay,  
19 who do they go to first?

20 They go to the district court. The same rules apply  
21 here. They go to Judge Drain.

22 On November 9, Judge Drain has committed to ruling on  
23 the stay issue. If they're unhappy with the ruling, they have  
24 a month to come before your Honor and continue their stay  
25 motion.

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1           What are they doing here now?

2           This is already scheduled for November 9, a month  
3 before the earliest date we can possibly emerge. Why are we  
4 litigating in two different fora the exact same issue? The  
5 rule is we go to the bankruptcy court first. We're there.  
6 We've exchanged witness lists. They then, all of a sudden, on  
7 Friday afternoon, file a motion in front of your Honor, Oh, my  
8 God, we need a stay.

9           But your Honor, we're already litigating. Give Judge  
10 Drain the chance. You know how Judge Drain works. He already  
11 said he will rule on November 9. If they're not happy, we'll  
12 come back.

13          But what are we doing here now?

14          Judge Drain is going to hear this exact issue.

15          THE COURT: OK. Then my question for the U.S. trustee  
16 is what can possibly happen between now and November 9 that  
17 will compromise your interests in any way? That's my question  
18 for the U.S. trustee.

19          MS. LEVENE: Yes, your Honor.

20          And I have a couple of responses. First of all,  
21 while, you know, the debtors say that nothing that they're  
22 doing now can support equitable mootness, that doesn't bind the  
23 Second Circuit. And while distributions to claimants aren't  
24 being made, my understanding is that money is being moved, so  
25 the advance order authorized an advance of \$297 million, and

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1 the sentencing hearing is before the effective date. Debtors  
2 have previously not conceded that they would not make an  
3 equitable mootness argument based on that.

4 THE COURT: I hate to say it, but I've been burned on  
5 statutory mootness -- grant you, in *Sears* -- where the debtor  
6 said he wouldn't make a statutory mootness argument and then  
7 ended up making a statutory mootness argument. And guess what?  
8 It was statutorily moot, and there was nothing I could do about  
9 it. And that was after I had written a 43-page opinion on the  
10 merits.

11 MR. KAMINETZKY: There's no statutory --

12 THE COURT: I know, so the debtor can say it won't  
13 make an equitable mootness argument, but it can change its  
14 mind. So I'm not interested in what the debtor says about  
15 whether it will or it won't, but it can't say anything today  
16 that binds it.

17 MR. KAMINETZKY: Your Honor, with respect to the  
18 advance, it's un -- the advance motion, the order itself says  
19 nothing herein can support an equitable mootness argument. The  
20 judge's order says.

21 THE COURT: That's what Judge Drain said in the *Sears*  
22 case about statutory mootness. He said I don't see how that  
23 could ever possibly apply here. He was wrong.

24 MR. HUEBNER: Your Honor --

25 THE COURT: I understand statutory mootness and

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1 equitable mootness are not the same thing, but they have the  
2 same impact. They have the same effect, which is to say they  
3 extinguish the appeal.

4 MR. HUEBNER: Your Honor, may I help for just a  
5 moment? I think I can make this very easy.

6 Between now and November 9, nothing is happening that  
7 relies on the confirmation order for its source of authority.  
8 No money, not one dollar, is being paid out to claimants,  
9 period, end of story. Out of \$1 billion of cash and seven to  
10 \$10 billion in total value, a total of under \$6.9 million was  
11 going to be used by the estate for ministerial matters to pay  
12 fees to begin to set up the boxes to receive funds once we go  
13 effective.

14 We even put unwind provisions into that. It's before  
15 a thousandth of one percent of the estate's assets. To be  
16 candid, your Honor, a different law firm probably would not  
17 have filed the funding motion. All debtors begin preparing for  
18 emergence long before they ever get to the confirmation hearing  
19 and do many ministerial acts. No court anywhere in the country  
20 ever in U.S. history has held that the type of entirely  
21 ministerial acts that are being done now give rise to mootness,  
22 and that's true all the way until December 1.

23 Your Honor, we have a hearing on November 9, which  
24 precedes that, and the short answer is there is no emergency.  
25 The trustee tells you in their opening line of their brief,

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1 which we respect in part, they filed the brief because the  
2 Second Circuit, in their view, in an extremely conservative  
3 view, requires that no stone be left unturned in being diligent  
4 in prosecuting their appeal. I think we can all agree that the  
5 U.S. trustee has been extraordinarily diligent. Frankly, we  
6 took your Honor's order of the day before that said, in all  
7 caps, stop filing papers right now.

8 THE COURT: Stop filing letters.

9 MR. HUEBNER: Letters.

10 So we actually didn't reply because we thought you'd  
11 be very upset at us if we burdened you with even more  
12 documents.

13 THE COURT: Oh, I've gotten more.

14 MR. HUEBNER: We have a 56-page brief ready for Judge  
15 Drain being shaped now. It's not only that we say it, because  
16 this is a doctrine, not a statutory obligation. The parties  
17 stipulated, every party who is an appellee here, including even  
18 the Sacklers, on the funding order that no party would ever  
19 argue it gave rise to mootness. Everyone in the courtroom  
20 agreed it would be a frivolous argument that no case ever  
21 handed down supports.

22 Here, it's actually very easy. Nothing is happening  
23 before November 9 except for things that don't even need court  
24 authority.

25 With respect to the funding motion, your Honor, which

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1 could never give rise to mootness, every party has agreed that  
2 that peppercorn of the amount of spending in this case could  
3 never give rise to mootness. As it happens, there are also  
4 unwarranted provisions. A lot of that money has already gone  
5 out.

6 THE COURT: You mean unlike provisions in the event  
7 that you lose on appeal.

8 MR. HUEBNER: Correct, your Honor. If we can't go  
9 effective, then we largely unwind the boxes. But ironically,  
10 and this is really what's very ironic, these boxes are for  
11 victim trusts. Everyone agrees that the victims will get  
12 distributions in these cases. Even in what we believe is an  
13 unthinkable situation, where this plan does not go effective  
14 and we have to start again on a new one, there will still need  
15 to be trusts to pay victims, so this is not about the Sackler  
16 releases or the confirmation per se of risk plans. This will  
17 be even for any plan. But there are already four sets of  
18 safety valves. It's an incredibly trivial fund. Everyone  
19 agrees it could never give rise to mootness. The judge has so  
20 ordered. It probably doesn't even need court authority and can  
21 be largely unwound. It's just professional fees to set up  
22 trusts to provide information so that the victims of this  
23 terrible situation, if we are allowed to go effective, can get  
24 paid when available.

25 Let me give you an easy example, your Honor. The *ad*

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1    hoc committees of the now roughly 38 states -- originally 24  
2    and then 15 flipped -- they and others have been interviewing  
3    board candidates for months, long before the confirmation  
4    hearings, long before briefs were filed, because the vision  
5    always was that a brand-new board and all that would be taking  
6    place. That's not in the confirmation order. No one needs the  
7    court's authority to do that. There is just nothing happening  
8    right now. The trustee has, in its view, done its job, leaving  
9    no micro pebble unturned and showing its diligence on appeal,  
10   but the reality is there is a four-factor test for an  
11   injunction. She said the words at the beginning of her  
12   argument, through all layers of appeal, so somehow we're here  
13   asking for a multiyear injunction on one day's notice and not  
14   even a business day.

15           THE COURT: I'm considering an application for a stay  
16   pending the appeal before me.

17           MR. HUEBNER: Understood, your Honor.

18           THE COURT: I'm considering it.

19           MR. HUEBNER: Understood.

20           THE COURT: I don't tell the Second Circuit what they  
21   can and can't do in terms of stays.

22           MR. HUEBNER: Your Honor, the good news is --

23           THE COURT: That's the way it works.

24           MR. HUEBNER: -- the reason we put the schedule right  
25   in the order was because this is actually very easy. It's



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1 over. You've set oral argument for November 30. We can't  
2 emerge until probably two weeks after that in the real world,  
3 so there is already time. We can revisit this in three or four  
4 or five or six weeks, but right now, irreparable harm, there's  
5 no conceivable harm. There isn't even a peppercorn of harm  
6 because the only potential harm at all is the possible risk of  
7 mootness. And again, we can talk on another day about how the  
8 law works and whether that counts, but even if it does, there  
9 is no possible mootness. None.

10 Your Honor, to be clear, and one of the reasons why --

11 THE COURT: Can I interrupt for a moment? You say  
12 everybody agrees. Where is this stipulation?

13 MR. HUEBNER: Sure.

14 Your Honor, we represented it on the record. When  
15 Judge Drain had a scheduling conference and said I don't see  
16 any emergency need for a bridge order, nothing is happening  
17 right now, we actually had this oral argument. And what was  
18 the scheduling conference, sort of like this one, a little bit  
19 turned into the oral argument on the need for an emergency  
20 bridge order, and each of the parties, in fact, the easiest way  
21 to think about it, your Honor, maybe, is there are two sets of  
22 two on the appellees' side. There are two for these hearings,  
23 the debtors and the committee. There are two sets of  
24 governmental creditors, representing almost every government in  
25 the country. 4,924 governments voted on this plan --

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1 governments, not individuals -- and had a 97 percent acceptance  
2 rate. One is the *ad hoc* committee of the governmental  
3 creditors that largely speaks for a majority of the states.  
4 The other is the multi-state governmental entities group, which  
5 largely speaks for the municipalities. You have two  
6 fiduciaries, two governmental groups.

7 Then the individual victims are largely split along  
8 two, NAS children and the adult PI's represented by Mr. Shore.  
9 Those are the private and those are the actual victims, which  
10 also makes this ironic. The U.S. trustee keeps claiming to  
11 speak for victims when the victims are right here, and then the  
12 final two, who are very different in kind because the rest of  
13 us are plaintiffs and the Sacklers are the defendants and we  
14 were getting ready to sue the Sacklers for many billions of  
15 dollars had the creditor groups not settled.

16 The A side and the B side are the last pairing. All  
17 of those parties, every one of them, agreed and represented and  
18 we've been here the whole case.

19 THE COURT: And you can print out those pages of the  
20 transcript and show them to me.

21 MR. HUEBNER: Sure, and our brief, your Honor, if your  
22 view --

23 THE COURT: A 56-page brief.

24 MR. HUEBNER: Well, it would need to be modified, your  
25 Honor. We've been hit with quite a few filings.

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1 THE COURT: I know.

2 MR. HUEBNER: That's actually one of the arguments we  
3 make to you, is that this has already been ruled upon.

4 Let me say this, your Honor, so there's no doubt of  
5 any kind.

6 THE COURT: (inaudible) by Judge Drain and you can  
7 consider this an appeal.

8 MR. HUEBNER: But your Honor, here's how we think  
9 about it, so there's no misunderstanding at all.

10 We want you to rule. One of the reasons we are  
11 opposing direct certification, among others -- one of the  
12 reasons, among others, that we do not support direct  
13 certification is because your order's made it clear you would  
14 move quickly, and there are hundreds of thousands of real  
15 people here who want this plan and need this plan. And so it  
16 was for that reason that the schedule just lays out perfectly,  
17 because nothing is happening except de minimis ministerial  
18 actions between now and December. Your Honor has already  
19 pledged to hear us on November 30, which is what we want.

20 There was never a vision, as you'll see the minute you  
21 start seeing pleadings from us, to moot your ruling, ever,  
22 which is why we found this motion extraordinary and  
23 extraordinarily unnecessary. As you saw from the schedule, we  
24 proposed a schedule faster than most of the appellants  
25 precisely because we want a ruling in the time that we hope

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1 will be sufficient, and if we get to December and your Honor  
2 says I need another ten days, another trial's come up, an  
3 emergency, this is very complicated, I can't rule until  
4 December 14, at least on the debtor side, your Honor, not going  
5 to be another choice because you're the judge, we would accept  
6 that in a heartbeat.

7 We're trying to balance, as the fiduciary for all  
8 parties, the fact that 1-1,000th of our creditors are seeking a  
9 stay. The other 99.99 percent are not. That's the highest  
10 voter turnout in chapter 11 history, and ten *ad hoc* groups  
11 representing every possible (inaudible) stakeholders voted  
12 overwhelmingly in favor of the plan. A small number of people  
13 have a different vision, and there's a lot to talk about. But  
14 your Honor, to be fair to the actual victims, tens of thousands  
15 of whose counsel is in the room and the vast majority of the  
16 states whose counsel is in the room, (inaudible) dominated  
17 obviously, as it often does, by the appellants' opening salvos.  
18 But a TRO and a stay are emergency extraordinary motions in  
19 which all four factors bear an evidentiary burden on the  
20 movant. The movant has no evidence. They have a concern that,  
21 maybe, possibly, they might run an incremental risk of  
22 equitable mootness, and they just are not correct.

23 And if your Honor wants a stipulation, we will draft  
24 one this afternoon. Every appellee will sign a stipulation  
25 that says we hereby swear for all time that nothing that

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1 transpires prior to December 1 could ever give rise to  
2 mootness, nor will we ever so assert, and your Honor can sign  
3 it. Judge Drain can sign it. We can just show it to you.

4 There's no real issue here. Everyone understands that  
5 the real mootness issues, if they are even legally cognizable  
6 as supporting a stay, begin in December. Judge Drain a going  
7 to have a hearing, and your Honor, there will be witnesses.  
8 There will be state attorney general witnesses on our side,  
9 because, in fact, the harms are much more serious than the U.S.  
10 trustee's leading you to believe. But again, that's not  
11 today's issue. Today's issue is, is there an emergency that  
12 requires --

13 (Indiscernible overlap)

14 THE COURT: -- no irreparable harm at this moment.

15 MR. HUEBNER: Correct, your Honor. And the day may  
16 come -- I'm not saying it won't -- when the decision about  
17 mootness versus effectiveness might have to be decided. That  
18 day is more than six weeks away.

19 MR. KAMINETZKY: (inaudible) given all that from the  
20 normal process --

21 THE COURT: OK.

22 MR. KAMINETZKY: -- of having the trial court rule on  
23 the state issues and then your Honor, as the appellate court,  
24 if necessary, can review after having seen the developed record  
25 of the evidence and of everything else that Judge Drain has

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1 committed to completing on November 9.

2 MR. HUEBNER: Your Honor, let me say one last thing,  
3 if I may, and I apologize a little bit for the tag team.

4 Obviously, this is a case of almost unthinkable  
5 complexity. The U.S. trustee made quite a few statements in  
6 their oral arguments, and one of dangers when one side files a  
7 big brief and you didn't is that things get even slightly  
8 locked into the judge's mind. So if I could just have 90 more  
9 seconds, I promise it will not be more than that, I just want  
10 to be very clear a few things, and I will leave it at that,  
11 unless the Court has questions.

12 No. 1, the issue, the allegation of inadequate notice  
13 that the U.S. trustee makes is literally mind-boggling. There  
14 are factual findings by Judge Drain.

15 THE COURT: I've read Judge Drain's opinion.

16 MR. KAMINETZKY: Done. But they've said they're --

17 THE COURT: I've read Judge Drain's opinion.

18 MR. HUEBNER: Understood. The second issue, your  
19 Honor, they misdescribe the releases, frankly, again and again.

20 THE COURT: Well, somebody better describe them to me,  
21 because I don't understand them.

22 MR. HUEBNER: Your Honor, we will, but let me make it  
23 very easy. With an infinitesimally small exception that we  
24 believe requires the overlap of two different null sets, no  
25 third-party claims against the Sacklers is being released that,

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1 by a party who does not also hold a claim against the debtors.  
2 I'm not sure what class action -- after first saying she  
3 doesn't know what it says, but then she actually went on to say  
4 what she hoped it said, that maybe some people somewhere  
5 alleged that the Sacklers somehow have liability unrelated to  
6 the debtors. We've been at this for three and a half years,  
7 your Honor, and we don't know of any such claim.

8 The plan was tailored at Judge Drain's demand. It  
9 used to say holders of claims and causes of action can be  
10 deemed releasing parties. Judge Drain rejected that. One of  
11 the six changes that was made in the final days was to narrow  
12 and narrow and narrow the releases. You have to be a holder of  
13 a claim against the debtors to have released your claims  
14 against the Sacklers, with, as I said, only one exception,  
15 which no one has ever identified as possibly even theoretically  
16 containing a claimant, which relates to a hypothetical,  
17 possible future claim not yet asserted that relates to products  
18 already in the stream of commerce that is also a claim against  
19 the Sacklers that is not also a claim against Purdue.

20 We actually don't think either of those categories  
21 exist. When I say we, your Honor, let me be very clear,  
22 because pronouns can be very tricky things, and people often  
23 obfuscate when they speak to a court or write emails or letters  
24 what their pronouns. Let me be very clear. We mean the PI  
25 victims who have counsel in this case and have an *ad hoc*

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1 committee that has represented them for years; the MDL PEC,  
2 which was appointed by Judge Polster and is part of the *ad hoc*  
3 committee that represents the huge umbrella group in the MDL  
4 the official committee of unsecured creditors -- there is a  
5 fiduciary for every creditor in this case -- and the debtors,  
6 who are fiduciaries for all.

7 THE COURT: Understood. All understood. All  
8 understood, and I thank the U.S. trustee's reference to class  
9 actions was to the fact that if this were still in front of my  
10 old law school classmate Judge Polster, the people who are so  
11 ably represented in this court would have an opportunity to  
12 say: You know what? I don't want to be here. I want to bring  
13 my own lawsuit. I don't like this. I don't want to be  
14 represented by these people.

15 And that's not what's happening here, and I think that  
16 that is the essence of the U.S. trustee's class action  
17 argument.

18 MR. HUEBNER: Your Honor, we agree, and if they were  
19 in one of the seven circuits that has upheld third-party  
20 releases being extraordinary circumstances in bankruptcy cases,  
21 that argument would not prevail. And the Second Circuit -- and  
22 we'll talk about that a lot, I think, next month.

23 THE COURT: We'll talk about that a lot.

24 MR. KAMINETZKY: -- is, we believe, clearly one of  
25 those. If we were in one of the few circuits that essentially



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1 said what one could argue is the analytic equivalent of a  
2 nonopt-out class action cannot be obtained through the  
3 bankruptcy system, then none of us would be here because we'd  
4 have a different plan and it would probably be unthinkably  
5 worse for all creditors, because your Honor, one of the things  
6 that you're seeing here, which unfortunately, the more you  
7 peel, the more complicated it gets, there are over 25  
8 intercreditor settlements embodied in the plan. So when the  
9 U.S. trustee told you, as she did a few minutes ago, Oh, the  
10 victims aren't getting paid from the money coming in from the  
11 Sacklers, that is untrue, because --

12 THE COURT: I didn't quite hear that.

13 MR. HUEBNER: No, your Honor. The phrase she used  
14 was --

15 THE COURT: We're now too much into the weeds.

16 MR. HUEBNER: Agreed.

17 THE COURT: OK? We're now too much into the weeds for  
18 me. I've only been in the case for a few days.

19 MR. HUEBNER: Agreed. Let me back right out, because  
20 in the end, I can end where I started, unless the Court has any  
21 questions.

22 There is no possible, credible, nonsanctionable claim  
23 that anything happening between now and December 1 could  
24 possibly give rise to mootness, and the possible potential risk  
25 of mootness is the only allegation of potential harm. Even if

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1 I give them all three other factors, there is no harm, and in  
2 whatever way this Court wants comfort, from every single  
3 appellee, that that view is forever and signed and guaranteed,  
4 we will do so. And if we're approaching December and there's a  
5 potential risk, I guess -- I actually don't think that will  
6 happen because, frankly, your Honor's passion for speed and  
7 understanding of the desperate needs of this case is  
8 extraordinarily acute.

9 THE COURT: Well, look, I understand that it has to go  
10 fast, and I understand that it's all important.

11 Let me hear from the U.S. trustee. It's her motion.

12 MS. LEVENE: Your Honor, thank you.

13 Your Honor, what we've just heard all relates to the  
14 advance order. It doesn't relate to the confirmation order,  
15 and so I think that needs to be clear, that what they're  
16 talking about is all -- you know, they're saying they don't  
17 even need the confirmation order for what they're doing right  
18 now. So none of that is an argument against staying a  
19 confirmation order.

20 But the other thing we heard was that the key date is  
21 December 1, which is not the effective date.

22 THE COURT: Actually, what they said December 8, but  
23 by December 1, if nothing had happened or if I thought I was  
24 going to have a hard time getting a decision out, that maybe  
25 then I would entertain a motion for a stay. Or actually, I

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1 think what he really said was Judge Drain's going to hear this  
2 on November 9 anyway.

3 MR. HUEBNER: Correct.

4 THE COURT: And if he rules against a stay, you'll  
5 take an appeal and it will be a lot closer to December by then  
6 and I might look at the equitable injury point differently.  
7 That's, I think, what he said.

8 MR. HUEBNER: Yes, your Honor. Exactly.

9 MS. LEVENE: Your Honor, there's two dates. The  
10 earliest effective date is December 8 and the sentencing date  
11 December 1, and my understanding of what Mr. Huebner has been  
12 saying is that December 1 is a critical date and that he is  
13 not --

14 THE COURT: It's a critical date because the earliest  
15 effective date is tied to the sentencing date. But if the  
16 sentencing doesn't happen until January, then I guess the  
17 earliest effective date may be in January.

18 MR. HUEBNER: That's exactly the point, your Honor.  
19 December 1 could become December 4 or December 9 or December  
20 12. But it's sure awfully after December 9, and we know that  
21 already, and that's why the burden of extraordinary harm and  
22 public --

23 THE COURT: OK. Got it, got it, got it. Let me  
24 listen to her.

25 MS. LEVENE: So, we haven't heard a reason why the

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1 confirmation order should not be stayed.

2 THE COURT: But yes, you have. You've heard a reason.  
3 The reason is there's no irreparable harm because we aren't  
4 going to be able to do anything that is authorized, for which  
5 our authority derives from the confirmation order, until at  
6 least the middle of December. That's what they said. So why  
7 do you need an injunction in the middle of October, especially  
8 when you're going to see it again in the middle of November?

9 MS. LEVENE: Your Honor, two things.

10 While we appreciate everybody's stipulations, as you  
11 pointed out, that does not bind the Second Circuit with respect  
12 to what's going on now.

13 THE COURT: Well, actually, no. What I was pointing  
14 out was in my case, dealing with another form of mootness, what  
15 Judge Drain opined and what the lawyers represented to Judge  
16 Drain turned out to be of no moment because the lawyers'  
17 client's interests changed and the lawyer did what was in his  
18 client's interests and not what he told Judge Drain he would  
19 not do.

20 MR. HUEBNER: Which is why we're willing to be bound,  
21 your Honor, in any way anyone --

22 THE COURT: OK. Fine.

23 MS. LEVENE: Your Honor, equitable mootness is a  
24 judgment doctrine.

25 THE COURT: Yes.

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1 MS. LEVENE: That stipulation cannot bind the Court to  
2 look at this and take a different --

3 THE COURT: Just thinking this out loud, but the only  
4 stipulation that I would accept is a stipulation that the  
5 argument will not be raised at any time in any court.

6 MR. KAMINETZKY: Your Honor --

7 THE COURT: Wait a minute. You don't need to talk.

8 MR. KAMINETZKY: Oh, sorry.

9 THE COURT: And going back to Judge Jacobs, who wrote  
10 this incredibly long opinion on what turned out to be utterly  
11 irrelevant issues in *Metromedia* and then talked about equitable  
12 mootness, the reason, he said, that he was opining on all those  
13 ultimately irrelevant issues was because they might have some  
14 bearing on what is equitable. OK? So I guess it's possible  
15 that there's some three-judge panel in the Second Circuit that  
16 would not find it inequitable if somebody went back on his  
17 word. But the difference between equitable mootness and  
18 statutory mootness is it wasn't in the statute. If it's in the  
19 statute, you can't get around it. And equity requires that you  
20 behave, so I think, I believe that's the essence of the  
21 argument.

22 MS. LEVENE: I understand the argument, your Honor.  
23 Our concern is, of course, none of that is binding on --

24 THE COURT: Understood.

25 MS. LEVENE: -- Second Circuit.

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1           THE COURT: You're saying if the circuit could raise  
2 equitable mootness *sua sponte* and would do so, that's what  
3 you're now afraid of, that the circuit will raise the question  
4 of equitable mootness *sua sponte*.

5           MS. LEVENE: If every party actually were to stipulate  
6 that they would never raise it, yes, that is a concern. But we  
7 are also concerned, your Honor, about, you know, again,  
8 December 1 --

9           THE COURT: I still want to know what's going to  
10 happen between now and November 9. In the end, my dear friend,  
11 my former law partner, Judge Drain, has a hearing on this for  
12 November 9. So I'm more focused on what's happening between  
13 now and November 9 than I am on what's happening between  
14 November 9 and December 1, because if I don't like Judge  
15 Drain's ruling and you come back, I can always undo that,  
16 unless you're in the circuit, in which case you're at their  
17 mercy.

18           MS. LEVENE: And what is happening is they're setting  
19 up the trusts. There's money as been described, being paid to  
20 professionals. It's, you know, building technology, paying for  
21 the services for these trusts. There's disclosure of PI data  
22 that we talked about, and of course, we're concerned about how  
23 they --

24           THE COURT: PI data being?

25           MS. LEVENE: Excuse me?

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1 THE COURT: PI data being what, identifying  
2 information?

3 MS. LEVENE: Personal information, including names and  
4 social security numbers.

5 THE COURT: Thank you.

6 MS. LEVENE: Birth dates, that kind of thing.

7 THE COURT: OK.

8 MS. LEVENE: And we want to ensure that there is time,  
9 of course, to bring this up to an appellate court, whether it's  
10 this Court or the Second Circuit, if we don't get the stay,  
11 that there is time to do that. So we would want --

12 THE COURT: Since you're either going to get the stay  
13 or not get the stay this week, I think you have time to bring  
14 it to the circuit. You can go next week. You want to be there  
15 anyway. Right?

16 MS. LEVENE: Yes, your Honor. If we got a decision up  
17 or down --

18 THE COURT: I mean I'm not going to sit on this for  
19 five weeks.

20 MS. LEVENE: As opposed to deferring to Judge Drain's  
21 decision, you know, a hearing in November.

22 THE COURT: OK. I get it. I get it. OK.

23 MR. KAMINETZKY: Your Honor --

24 MS. LEVENE: I don't want to get to a point where  
25 they've set up everything that they need to to flip a switch

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1 and then they flip the switch and they go forward to sentencing  
2 or they go forward with the equitable -- the effective date,  
3 and suddenly, we're out of luck.

4 THE COURT: In a hypothetical world, where the Second  
5 Circuit doesn't take this, you're sitting here on the 30th of  
6 November and we're all talking about this stuff, and the  
7 sentencing is scheduled for December the 1st and you stand up  
8 and say, Judge, they can flip a switch, what makes you think I  
9 wouldn't stay it then?

10 MS. LEVENE: Your Honor --

11 THE COURT: I've already written one opinion in  
12 bankruptcy that I had to undo because of the stupid mootness  
13 issue. So what makes you think I would want to run that risk  
14 again?

15 MS. LEVENE: I understand, your Honor.

16 THE COURT: Hypothetically.

17 MS. LEVENE: If we're in that position, that's, you  
18 know, what we'll do. And you know, we need to make sure we  
19 know sufficiently in advance to be able to come and do that.

20 THE COURT: Agreed.

21 MS. LEVENE: But we are --

22 THE COURT: Absolutely agreed.

23 MS. LEVENE: We are concerned that there's no  
24 guarantees of how the Second Circuit would view the actions  
25 being taken now.



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1 THE COURT: OK. All right.

2 Now, you wanted to say something, for the state of  
3 Washington, *et al.*

4 MR. GOLD: Thank you, your Honor.

5 THE COURT: Hello, Mr. Gold.

6 MR. GOLD: Your Honor, I just want to observe that  
7 Mr. Huebner made some eloquent statements about the position of  
8 the debtors with respect to how I would just generally  
9 characterize how the events that he's referring to could not  
10 lead to equitable mootness; he never would argue that it would  
11 lead to equitable mootness, ought to be bound to that  
12 statement, and I just think it would be helpful for the record  
13 because all of the other parties who are claiming they are  
14 appellees who are here in the courtroom, it would be helpful  
15 for them to state for the record that they agree with  
16 Mr. Huebner's position rather than have the Court simply take  
17 what Mr. Huebner's articulated and have some other party say I  
18 didn't say anything at the hearing, I reserved the right to --

19 THE COURT: Oh, believe me. If it came to that, it  
20 would have to be in writing, signed by everybody, or there  
21 would be --

22 MR. GOLD: Thank you, your Honor.

23 MR. ECKSTEIN: Your Honor, may I be heard?

24 THE COURT: Mr. Eckstein.

25 MR. ECKSTEIN: Your Honor, good afternoon.

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1           On behalf of the *ad hoc* committee of governmental  
2 claimants, thank you for the opportunity to be heard, your  
3 Honor.

4           Your Honor, I do not think I need to belabor what has  
5 already been a long hearing. I'm not going to try not to  
6 repeat. Mr. Huebner, I believe, has very, very effectively and  
7 accurately described the sentiments of all of the parties on  
8 the appellees' side. I do respect Mr. Gold's comments, and I  
9 do want to try to appeal to your Honor to make sure you  
10 appreciate what is actually happening over the near term.

11           First of all, I'm going to respond directly to  
12 Mr. Gold's suggestion, and I'm going to represent on behalf of  
13 my client that we completely subscribe to the view that the  
14 events that are taking place over the next few weeks, the  
15 ministerial acts, the ordinary-course steps that are being  
16 taken to prepare the company in the event we have the  
17 opportunity to emerge will not be a basis for my clients to  
18 assert equitable mootness in any court, and that should be  
19 unequivocal. And that was our position several weeks ago in  
20 front of Judge Drain. That was included in Judge Drain's order  
21 and it should be represented again here so your Honor knows  
22 that is the case, and I agree it should be done in writing,  
23 because it's an important issue and there should be no  
24 confusion.

25           The reason, your Honor, why I rise to make it clear

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1 that is our view is because it is, in fact, critical to the  
2 work that we've been doing over the past two years in this case  
3 and in particular over the last several months. It is critical  
4 to allow us to continue to at least move this case to a  
5 position where, assuming ultimately the order is affirmed, we  
6 have the ability to go effective, because it is critical that  
7 this plan go effective. Every month of delay is costing tens  
8 of millions of dollars for this estate.

9 What are we doing over the next couple of weeks?

10 Your Honor, in my case, for example, we're in the  
11 process of interviewing very, very significant individuals who  
12 are being considered to become members of the board of the new  
13 company that will be created out of old Purdue. That is a very  
14 significant responsibility. We're dealing with people of  
15 national reputation. We have an outside search firm that has  
16 been doing this for months. And your Honor, respectfully,  
17 there's concern that in the face of a stay imposed by your  
18 Honor, we may be precluded from taking any further steps to  
19 complete the seating of this board.

20 Now, obviously, the board's not going to take any  
21 responsibility for this company until the plan goes effective,  
22 but I think as your Honor can appreciate, it takes weeks, if  
23 not longer, to get people comfortable with taking this  
24 responsibility on. What does it mean, dealing with the  
25 posteffective date insurance, all of the other factors that go

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1 into setting up a new company?

2           There are trusts that are being created. We have to  
3 identify trustees who will be responsible for disbursing  
4 billions and billions of dollars to the states, municipalities,  
5 the hospitals, the third-party payors and the individuals, each  
6 of whom are beneficiaries of this plan. This is a complicated  
7 infrastructure. All we want to make sure is that we have the  
8 ability not to lose precious time.

9           One of the important parts of this settlement was a  
10 conclusion by all the parties who support it that it is time to  
11 put the billions of dollars that we have available through this  
12 plan to the benefit of abating the opioid crisis. It's taken a  
13 long time, because as Mr. Huebner said, this case is the  
14 product of scores of individual settlements that have been  
15 reached between multiple constituencies. My clients dedicated  
16 themselves for two years, working with the UCC, working with  
17 the debtors, working with the MSGE, working with all the other  
18 private groups to reach settlements as to how we can try to  
19 implement a plan.

20           That was a very, very monumental task, and remarkably,  
21 it was done consensually. And I think as your Honor  
22 appreciates, that is not always the case, but it was done  
23 consensually, which is the reason why the only issue, the only  
24 real issue that your Honor is going to have to contend with is  
25 whether or not the legal issue of the third-party release, all

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1 the other issues essentially were resolved. So we genuinely  
2 are hoping that we will have the ability for this plan to go  
3 effective, and we urge the Court to give us the flexibility  
4 that we believe is reasonable to take these ministerial steps  
5 based upon the understanding that all of the appellees in this  
6 case, the debtors, UCC and everybody else, is going to confirm,  
7 orally and in writing, that none of these steps are going to  
8 give rise to an argument for equitable mootness, and I wanted  
9 to make sure that that is clear.

10 At the appropriate time, your Honor, as Mr. Huebner  
11 says, we'll describe for your Honor the billions of dollars  
12 that we've negotiated to come out -- to come out -- from both  
13 Purdue and from the Sacklers as part of this settlement for the  
14 benefit of abating the opioid crisis and for the benefit of  
15 paying the individual private creditors who are the  
16 beneficiaries of this plan. And we believe that staying  
17 that -- once the plan can go effective, we believe staying that  
18 will cause dramatic, dramatic harm. But that is not something  
19 that we have to confront today. All we want to focus on today  
20 is making sure that we have the ability to continue to put the  
21 building blocks in place, none of which -- none of which --  
22 will give rise to equitable mootness, and we believe that  
23 therefore there shouldn't be a stay of those items, coupled  
24 with the representation that we can't go effective, as your  
25 Honor has heard, until early December.

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1 THE COURT: OK.

2 MR. ECKSTEIN: Hopefully that's a little bit of  
3 context.

4 THE COURT: Got it.

5 MR. ECKSTEIN: I don't want to be --

6 THE COURT: I've got it.

7 MR. HUEBNER: Your Honor, let me make it a bit easier.  
8 We're happy -- the debtors are in sole control of  
9 sending further funds out under the funding motion. As it  
10 happens, as I described before, it's entirely for ministerial  
11 items, and most of it has already gone, because the order was  
12 entered weeks ago. If your Honor would be more comfortable  
13 having the debtors not use the small amounts of remaining money  
14 under that order, we'd be happy to. That's the only thing we  
15 know of that is actually happening. But your Honor, to be  
16 clear, we're sort of in a double through the looking glass  
17 world right now.

18 Equitable mootness is a doctrine that says that when  
19 there's a comprehensive, irreversible change in circumstances  
20 that cannot possibly be undone, that's the effective date of a  
21 plan.

22 THE COURT: I know that.

23 MR. HUEBNER: Courts have said that for 25 years.

24 THE COURT: I know that.

25 MR. HUEBNER: And the second thing, your Honor, is you

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1 keep asking what is happening before November 9 that is an  
2 emergency that I need to issue an extraordinary order to stop,  
3 and the answer is nothing.

4 THE COURT: OK.

5 MR. HUEBNER: It's just that simple.

6 THE COURT: OK. All right.

7 MR. ECKSTEIN: Your Honor, thank you very much.

8 THE COURT: I've got what I need.

9 If you must.

10 MR. EDMUNDS: Your Honor, very briefly.

11 I would just like to note we weren't sure what to do  
12 following this Court's order Sunday night. We have, the states  
13 have slightly different arguments and slightly, have  
14 articulated different reasons in their own stay motions before  
15 the bankruptcy court, and I think just one of them at least is  
16 relevant here, and that is that this -- the states that have  
17 objected to this settlement. Those states believe that the  
18 settlement is not adequate to do what we need to do to rein in  
19 the opioid crisis the conduct has created.

20 THE COURT: OK.

21 MR. EDMUNDS: Courts have held that any time that we  
22 are enjoined from exercising our police powers there is  
23 irreparable harm, but the bigger irreparable harm may be what  
24 if everyone is wrong.

25 THE COURT: People, people, I've really --

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1 MR. EDMUNDS: What if -- I mean no one is  
2 guaranteeing, and I might agree that it's unlikely the actions  
3 in the next month will equitably moot the case, but what if  
4 we're all wrong? A court can't determine the preclusive effect  
5 of its own judgment. I've cited that many times in a different  
6 area of the law, but I think the same principle is applicable  
7 here. What if we're wrong? There may be a harm that comes  
8 from the fact that we haven't gotten enough or we haven't  
9 deterred conduct sufficiently to take care of this massive  
10 crisis that we face. And that's an additional concern that the  
11 states have that I think warrants, given the significance of  
12 this case to the public health, a stay so that we know that we  
13 are going forward with the right plan when we are, the plan  
14 that will ultimately be approved and we do not run the risk  
15 that we're going forward with one that is wrong and that we'll  
16 be stuck with all the same.

17 Thank you, your Honor.

18 MR. HUEBNER: Your Honor, with respect to Mr. Edmunds,  
19 I'm actually so glad he spoke up, because what it shows even  
20 more clearly than until a few minutes ago is that there are  
21 different arguments on the propriety of the stay that no one  
22 has even briefed yet. As it happens, we're ready to explain  
23 those relevant cases to Judge Drain because we think they do  
24 not remotely stand for the principle for which Mr. Edmunds  
25 cited them, but the whole point is he hasn't even filed his



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1 papers yet in this court because they're down below before the  
2 trial court who is ready to hear this in three and a half weeks  
3 where we can actually have due process. And that's the  
4 ultimate irony, that many of the appellants' core position is a  
5 denial of due process in some cases on behalf of people who do  
6 not exist, and we will show this Court that on the merits, that  
7 the alleged victims U.S. trustee's seeking to protect don't  
8 exist. But the appellees also deserve due process.

9 THE COURT: Mr. Huebner, please.

10 MR. HUEBNER: Thank you, your Honor.

11 THE COURT: Yes, sir.

12 MR. SHORE: Your Honor, very briefly.

13 On behalf of the *ad hoc* group of individual victims, I  
14 just want to focus on one thing that's getting lost, and it  
15 sounds like Mr. Huebner was willing to give it away when he  
16 says we're not going to spend any more money on advances. We  
17 were the ones who came up with the advances order. We drafted  
18 the motion for the debtors and we asked them to file it, and it  
19 was to address one irony in all this case. Everybody else in  
20 this room is either being funded through the debtors' estate,  
21 all of their fees and expenses, or is a state or the federal  
22 government.

23 We are a group of individual victims out of whose  
24 money, out of whose pockets any money needs to be spent to  
25 start advancing. So we came to the debtors with a very

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1 definitive budget of \$4,012,500, broken down into categories I  
2 can bring to your Honor, all of which needs to be spent before  
3 the trust can get up and running and get money out to victims.  
4 No one's going to say here that victims should be denied money  
5 when it's ready to go, and every day that we're delayed in  
6 spending money on getting this up and running is a day that  
7 victims won't get money.

8           So I'm just going to implore your Honor that we don't  
9 need a stay of this. It's \$4,012,500, which is probably about  
10 a week of money that the debtors are spending on the  
11 professionals in this room, because everybody's getting funded.  
12 We're not. If we don't get the money, we can't do it. If we  
13 don't do it, there's going to be more delay. So I haven't  
14 heard an argument, particularly when the order itself by which  
15 the debtors were given authority to advance the money to us,  
16 any argument as to how that's going to scramble an egg or do  
17 anything else when the order itself says that no party can rely  
18 on it for equitable mootness, which is something we were, of  
19 course, willing to give up because who would ever argue that.

20           So as they exist right now, I think the TRO would  
21 prevent the debtors from doing that, and as I said, I implore  
22 your Honor, there is no need to extend that order, because that  
23 is just keeping money out of the hands of victims if we're  
24 right in the appeal, which we think we are.

25           THE COURT: Which you think you are and other people

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1 think you're not, and the one thing I won't compromise is my  
2 ability to decide that. OK? At least until you take it away  
3 from me and send it to a different court and then they can do  
4 whatever they want.

5 You'll have a decision tomorrow. The TRO's extended  
6 for one day, and that's that.

7 Thank you. Very educational.

8 What else do we have on the agenda today?

9 MR. KAMINETZKY: Your Honor, that was our last agenda  
10 item.

11 THE COURT: Oh, really. That's wonderful.

12 I've chaired many meetings over the last five years.  
13 Do we have any new business?

14 Good. I'm delighted. Excellent.

15 It is a pleasure meeting you all. It was lovely  
16 seeing some of your faces. It will be great to work with you  
17 if that's the way it comes out, and someone should let me know  
18 what happens on Thursday with Judge Drain. OK?

19 All right. Great. Thank you, all, very much.

20 Thank you, California, for being here.

21 MS. LEVENE: Thank you, your Honor.

22 (Adjourned)  
23  
24  
25

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

4 - - - - - x

5 In the Matter of:

6

7 PURDUE PHARMA L.P.,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 November 9, 2021

17 9:49 AM

18

19

20

21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: ART

1 HEARING re Order signed on 11/3/2021 Establishing Procedures  
2 for Remote Hearing on Motions for Stay Pending Appeal with  
3 hearing to be held on 11/9/2021 at 10:00 AM at  
4 Videoconference (ZoomGove) (RDD)

5  
6 HEARING re Notice of Agenda / Agenda for November 9, 2021  
7 Hearing

8  
9 HEARING re Motion for Stay Pending Appeal / Memorandum of  
10 Law In Support of United States Trustees Expedited Motion  
11 for a Stay of Confirmation Order and Related Orders Pending  
12 Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8007  
13 (related document(s) 3777, 3776) filed by Linda Rifkin on  
14 behalf of United States Trustee. (ECF #3778)

15  
16 HEARING re Objection to Motion / Ad Hoc Committee's  
17 Objection to Stay Motions (related document(s) 3801, 3873,  
18 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein  
19 on behalf of Ad Hoc Committee of Governmental and Other  
20 Contingent Litigation Claimants. (ECF #4002)

21  
22 HEARING re Opposition Tribal Group Joinder in Opposition to  
23 Stay Motions filed by Peter D'Apice on behalf of Certain  
24 Native American Tribes and Others (ECF #4003)

25

1 HEARING re Opposition of the Official Committee of Unsecured  
2 Creditors to Motions for Stay Pending Appeal (related  
3 document(s) 3801, 3873, 3789, 3845) filed by Ira S.  
4 Dizengoff on behalf of The Official Committee of Unsecured  
5 Creditors of Purdue Pharma L.P., et al. (ECF #4006)

6  
7 HEARING re Opposition The Ad Hoc Committee of NAS Children's  
8 Joinder to Opposition of the Official Committee of Unsecured  
9 Creditors to Motions for Stay Pending Appeal (related  
10 document(s) 4006) filed by Harold D. Israel on behalf of Ad  
11 Hoc Committee of NAS Babies. (ECF #4009)

12  
13 HEARING re Opposition Joinder of the Private Insurance  
14 Ratepayers to Opposition of the Official Committee of  
15 Unsecured Creditors to Motions for Stay Pending Appeal  
16 (related document(s) 3801, 3873, 3789, 3845) filed by  
17 Nicholas F. Kajon on behalf of Eric, Hestrup, et al.  
18 (ECF #4010)

19  
20 HEARING re Opposition /Joinder (related document(s) 4006)  
21 filed by Lauren Guth Barnes on behalf of Blue Cross Blue  
22 Shield Association. (ECF #4011)

23  
24  
25

1 HEARING re Objection to Motion /The Ad Hoc Group of  
2 Individual Victims' (I) Objection to the United States  
3 Trustee's and Certain Public Creditors' Motion for Stay  
4 Pending Appeal and (II) Joinder in the Opposition of the  
5 Official Committee of Unsecured Creditors to Motions for  
6 Stay Pending Appeal (related document(s) 3873, 3972, 3789,  
7 3845) filed by J. Christopher Shore on behalf of Ad Hoc  
8 Group of Individual Victims of Purdue Pharma L.P.  
9 (ECF #4012)

10

11 HEARING re Memorandum of Law/Debtors' Memorandum of Law in  
12 Opposition to the Motions for Stays of the Confirmation  
13 Order and the Advance Order Pending Appeal (related .  
14 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)  
15 filed by Marshall Scott Huebner on behalf of Purdue Pharma  
16 L.P. (ECF #4014)

17

18 HEARING re Opposition of the MSGE Group to the Motions to  
19 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
20 3789, 3860, 3845) filed by Kevin C. MacLay on behalf  
21 of Multi-State Governmental Entities Group. (ECF #4016)  
22 Opposition - Joinder to the Opposition of the Official  
23 Committee of Unsecured Creditors to Motions for Stay Pending  
24 Appeal (related document(s) 4006) filed by Michael Patrick  
25 O'Neil on behalf of Ad Hoc Group of Hospitals. (ECF #4017)

1 HEARING re Reply to Motion Reply in Support of United States  
2 Trustee's Motion for a Stay of Confirmation Order and  
3 Related Orders Pending Appeal Pursuant to Federal Rule of  
4 Bankruptcy Procedure 8007 (related document(s) 3801, 3972,  
5 3778) filed by Paul Kenan Schwartzberg on behalf of United  
6 States Trustee. (ECF #4050)

7  
8 Related Documents:

9 Order signed on 9/15/2021 Granting Motion (I) Authorizing  
10 the Debtors to Fund Establishment of the Creditor Trusts,  
11 the Master Disbursement Trust and Topco, (II) Directing  
12 Prime Clerk LLC to Release Certain Protected Information,  
13 and (III) Granting Other Related Relief (Related Doc# 3484).  
14 (ECF #3773)

15  
16 HEARING re Motion to Shorten Time United States Trustees Ex  
17 Parte Motion For An Order Shortening Notice And Scheduling  
18 Hearing With Respect To The United States Trustees Expedited  
19 Motion For A Stay Of Confirmation Order And Related Orders  
20 Pending Appeal Pursuant To Federal Rule Of Bankruptcy  
21 Procedure 8007 (related document(s) 3 778) filed by Linda  
22 Riffkin on behalf of United States Trustee. (ECF #3779)



1 HEARING re Modified Bench Ruling On For Confirmation Of  
2 Eleventh Amended Joint Chapter 11 Plan Signed on 9/17/2021.  
3 (ECF #3786)

4  
5 HEARING re Findings Of Fact, Conclusions Of Law, And Order  
6 Confirming The Twelfth Amended Joint Chapter 11 Plan Of  
7 Reorganization Of Purdue Pharma L.P. And Its Affiliated  
8 Debtors Signed On 9/17/2021 (related document(s)3726).  
9 (ECF #3787)

10  
11 HEARING re Amended Motion for Stay Pending Appeal/ Amended  
12 Memorandum of Law In Support Of United States Trustee's  
13 Expedited Motion For A Stay Of Confirmation Order And  
14 Related Orders Pending Appeal Pursuant To Federal Rule Of  
15 Bankruptcy Procedure 8007 (related document(s)3799, 3777,  
16 3776, 3778, 3779) filed by Linda Riffkin on behalf of United  
17 States Trustee. (ECF #3801)

18  
19 HEARING re Motion to Stay/ Memorandum of Law in Support of  
20 United States Trustee's Expedited Motion to Extend the  
21 Automatic Stay of the Confirmation Order and for a Limited  
22 Stay of the Related Orders Pending Resolution of His  
23 Expedited Motion for a Stay Pending Appeal (related  
24 document(s)3786, 3787, 3773) filed by Linda Riffkin on  
25 behalf of United States Trustee. (ECF #3803)

1 HEARING re Motion to Shorten Time I United States Trustees  
2 Ex Parte Motion for an Order Shortening Notice and  
3 Scheduling Hearing with Respect to the United States  
4 Trustee's Expedited Motion to Extend the Automatic Stay of  
5 the Confirmation Order and for a Limited Stay of the Related  
6 Orders Pending Resolution of His Expedited Motion for a  
7 Stay Pending Appeal (related document(s) 3803) filed by Linda  
8 Riffkin on behalf of United States Trustee. (ECF #3804)

9  
10 HEARING re Statement/ Notice of Listen-Only Dial-in for  
11 Status and Scheduling Conference (related document(s) 3779)  
12 filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P.  
13 (ECF #3838)

14  
15 HEARING re Motion for Stay Pending Appeal / Second Amended  
16 Memorandum Of Law In Support Of United States Trustees  
17 Amended Expedited Motion For A Stay Of Confirmation  
18 Order And Related Orders Pending Appeal Pursuant To Federal  
19 Rule Of Bankruptcy Procedure 8007 (related document(s) 3801,  
20 3778) filed by Brian S. Masumoto on behalf of United States  
21 Trustee. (ECF #3972)

1 HEARING re Motion for Stay Pending Appeal/ Blackline Second  
2 Amended Memorandum Of Law In Support Of United States  
3 Trustees Amended Expedited Motion For A Stay Of Confirmation  
4 Order And Related Orders Pending Appeal Pursuant To Federal  
5 Rule Of Bankruptcy Procedure 8007 (related document(s)3972)  
6 filed by Brian S. Masumoto on behalf of United States  
7 Trustee. (ECF #3973)

8  
9 HEARING re Objection to Motion / Ad Hoc Committee's  
10 Objection to Stay Motions (related document(s)3801, 3873,  
11 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein  
12 on behalf of Ad Hoc Committee of Governmental and Other  
13 Contingent Litigation Claimants. (ECF #4002)

14  
15 HEARING re Declaration of Cheryl Juaire in Support of the  
16 Opposition of the Official Committee of Unsecured Creditors  
17 to Motions for Stay Pending Appeal (related document(s)4006)  
18 filed by Ira S. Dizengoff on behalf of The Official  
19 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
20 al. (ECF #4007)

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25

1 HEARING re Declaration of Kara Trainor in Support of the  
2 Opposition of the Official Committee of Unsecured Creditors  
3 to Motions for Stay Pending Appeal (related document(s) 4006)  
4 filed by Ira S. Dizengoff on behalf of The Official  
5 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
6 al. (ECF #4008)

7  
8 HEARING re Motion to Allow/ Debtors' Motion for Leave to  
9 Exceed the Page Limit in Filing Memorandum of Law in  
10 Opposition to the Motions for Stays of the Confirmation  
11 Order and the Advance Order Pending Appeal filed by Marc  
12 Joseph Tobak on behalf of Purdue Pharma L.P. (ECF #4013)

13  
14 HEARING re Declaration of Jesse DelConte (related  
15 document(s) 4014) filed by Marshall Scott Huebner on behalf  
16 of Purdue Pharma L.P. (ECF #4015)

17  
18 HEARING re Opposition of the MSGE Group to the Motions to  
19 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
20 3789, 3860, 3845) filed by Kevin C. MacLay on behalf  
21 of Multi-State Governmental Entities Group. (ECF #4016)

22  
23  
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25

1 HEARING re Amended Statement Supplemental Designation of  
2 Record in Rebuttal and in Support of United States Trustee's  
3 Second Amended Expedited Motion for a Stay of Confirmation  
4 Order and Related Orders Pending Appeal Pursuant to Federal  
5 Rule of Bankruptcy Procedure 8007 (related document(s) 3972)  
6 filed by Paul Kenan Schwartzberg on behalf of United States  
7 Trustee. (ECF #4043)

8  
9 HEARING re Motion to Allow Motion to Exceed Page Limit in  
10 Filing Reply in Support of United States Trustee's Motion  
11 for a Stay of Confirmation Order and Related Orders Pending  
12 Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8007  
13 filed by Paul Kenan Schwartzberg on behalf of United States  
14 Trustee. (ECF #4049)

15  
16 HEARING re Motion for Stay Pending Appeal (related  
17 document(s) 3786, 3787, 3773) filed by Matthew J. Gold on  
18 behalf of State of Washington. (ECF #3789)

19  
20 Responses Received:  
21 Objection to Motion/ Ad Hoc Committee's Objection to Stay  
22 Motions (related document(s) 3801, 3873, 3972, 3789, 3778,  
23 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc  
24 Committee of Governmental and Other Contingent Litigation  
25 Claimants. (ECF #4002)

1  
2 HEARING re Opposition Tribal Group Joinder in Opposition to  
3 Stay Motions filed by Peter D'Apice on behalf of Certain  
4 Native American Tribes and Others. (ECF #4003)

5  
6 HEARING re Opposition of the Official Committee of Unsecured  
7 Creditors to Motions for Stay Pending Appeal (related  
8 document(s) 3801, 3873, 3789, 3845) filed by Ira S. Dizengoff  
9 on behalf of The Official Committee of Unsecured Creditors  
10 of Purdue Pharma L.P., et al. (ECF #4006)

11  
12 HEARING re Opposition The Ad Hoc Committee of NAS Children's  
13 Joinder to Opposition of the Official Committee of Unsecured  
14 Creditors to Motions for Stay Pending Appeal (related  
15 document(s) 4006) filed by Harold D. Israel on behalf of Ad  
16 Hoc Committee of NAS Babies. (ECF #4009)

17  
18 HEARING re Opposition Joinder of the Private Insurance  
19 Ratepayers to Opposition of the Official Committee of  
20 Unsecured Creditors to Motions for Stay Pending Appeal  
21 (related document(s) 3801, 3873, 3789, 3845) filed by  
22 Nicholas F. Kajon on behalf of Eric Hestrup, et al.  
23 (ECF #4010)

1 HEARING re Opposition /Joinder (related document(s) 4006)  
2 filed by Lauren Guth Barnes on behalf of Blue Cross Blue  
3 Shield Association. (ECF #4011)  
4

5 HEARING re Objection to Motion /The Ad Hoc Group of  
6 Individual Victims' (I) Objection to the United States  
7 Trustee's and Certain Public Creditors' Motion for Stay  
8 Pending Appeal and (II) Joinder in the Opposition of the  
9 Official Committee of Unsecured Creditors to Motions for  
10 Stay Pending Appeal (related document(s) 3873, 3972, 3789,  
11 3845) filed by J. Christopher Shore on behalf of Ad Hoc  
12 Group of Individual Victims of Purdue Pharma L.P.  
13 (ECF #4012)  
14

15 HEARING re Memorandum of Law/ Debtors' Memorandum of Law in  
16 Opposition to the Motions for Stays of the Confirmation  
17 Order and the Advance Order Pending Appeal (related  
18 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)  
19 filed by Marshall Scott Huebner on behalf of Purdue Pharma  
20 L.P. (ECF #4014)  
21

22 HEARING re Opposition of the MSGE Group to the Motions to  
23 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
24 3789, 3860, 3845) filed by Kevin C. MacLay on behalf  
25 of Multi-State Governmental Entities Group. (ECF #4016)

1 HEARING re Opposition - Joinder to the Opposition of the  
2 Official Committee of Unsecured Creditors to Motions for  
3 Stay Pending Appeal (related document(s) 4006) filed by  
4 Michael Patrick O'Neil on behalf of Ad Hoc Group of  
5 Hospitals. (ECF #4017)

6  
7 Related Documents:

8 Modified Bench Ruling On Confirmation Of Eleventh Amended  
9 Joint Chapter 11 Plan Signed on 9/17/2021. (ECF #3786)

10  
11 HEARING re Findings Of Fact, Conclusions Of Law, And Order  
12 Confirming The Twelfth Amended Joint Chapter 11 Plan Of  
13 Reorganization Of Purdue Pharma L.P. And Its Affiliated  
14 Debtors Signed On 9/17/2021 (related document(s) 3726) .  
15 (ECF #3787)

16  
17 HEARING re Objection to Motion/ Ad Hoc Committee's Objection  
18 to Stay Motions (related document(s) 3801, 3873, 3972, 3789,  
19 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of  
20 Ad Hoc Committee of Governmental and Other Contingent  
21 Litigation Claimants. (ECF #4002)



1 HEARING re Objection to Motion I Ad Hoc Committee's  
2 Objection to Stay Motions (related document(s) 3801, 3873,  
3 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein I  
4 on behalf of Ad Hoc Committee of Governmental and Other  
5 Contingent Litigation Claimants. (ECF #4002)

6  
7 HEARING re Declaration of Cheryl Juaire in Support of the  
8 Opposition of the Official Committee of Unsecured Creditors  
9 to Motions for Stay Pending Appeal (related document(s) 4006)  
10 filed by Ira S. Dizengoff on behalf of The Official  
11 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
12 al. (ECF #4007)

13  
14 HEARING re Declaration of Kara Trainor in Support of the  
15 Opposition of the Official Committee of Unsecured Creditors  
16 to Motions for Stay Pending Appeal (related document(s) 4006)  
17 filed by Ira S. Dizengoff on behalf of The Official  
18 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
19 al. (ECF #4008)

20  
21 HEARING re Motion to Allow/ Debtors' Motion for Leave to  
22 Exceed the Page Limit in Filing Memorandum of Law in  
23 Opposition to the Motions for Stays of the Confirmation  
24 Order and the Advance Order Pending Appeal filed by Marc  
25 Joseph Tabak on behalf of Purdue Pharma L.P. (ECF #4013)

1 HEARING re Declaration of Jesse DelConte (related  
2 document(s) 4014) filed by Marshall Scott. Huebner on behalf  
3 of Purdue Pharma L.P. (ECF #4015)

4  
5 HEARING re Opposition of the MSGE Group to the Motions to  
6 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
7 3789, 3860, 3845) filed by Kevin C. MacLay on behalf of  
8 Multi-State Governmental Entities Group. (ECF #4016)

9  
10 HEARING re Reply to Motion Reply in Further Support of  
11 Motion of the States of Washington and Connecticut for a  
12 Stay Pending Appeal filed by Matthew J. Gold on behalf of  
13 State of Washington. (ECF #4051)

14  
15 HEARING re Motion for Stay Pending Appeal of Confirmation  
16 and Trust Advances Orders filed by Brian Edmunds on behalf  
17 of State Of Maryland. (ECF #3845)

18  
19 Responses Received:

20 Objection to Motion/ Ad Hoc Committee's Objection to Stay  
21 Motions (related document(s) 3801, 3873, 3972, 3789, 3778,  
22 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc  
23 Committee of Governmental and Other Contingent Litigation  
24 Claimants. (ECF #4002)

1 HEARING re Opposition Tribal Group Joinder in Opposition to  
2 Stay Motions filed by Peter D'Apice on behalf of Certain  
3 Native American Tribes and Others. (ECF #4003)  
4

5 HEARING re Opposition of the Official Committee of Unsecured  
6 Creditors to Motions for Stay Pending Appeal (related  
7 document(s)3801, 3873, 3789, 3845) filed by Ira S. Dizengoff  
8 on behalf of The Official Committee of Unsecured Creditors  
9 of Purdue Pharma L.P., et al. (ECF #4006)  
10

11 HEARING re Opposition The Ad Hoc Committee of NAS Children's  
12 Joinder to Opposition of the Official Committee of Unsecured  
13 Creditors to Motions for Stay Pending Appeal (related  
14 document(s)4006) filed by Harold D. Israel on behalf of Ad  
15 Hoc Committee of NAS Babies. (ECF #4009)  
16

17 HEARING re Opposition Joinder of the Private Insurance  
18 Ratepayers to Opposition of the Official Committee of  
19 Unsecured Creditors to Motions for Stay Pending Appeal  
20 (related document(s)3801, 3873, 3789, 3845) filed by  
21 Nicholas F. Kajon on behalf of Eric Hestrup, et al.  
22 (ECF #4010)  
23  
24  
25

1 HEARING re Opposition /Joinder (related document(s) 4006)  
2 filed by Lauren Guth Barnes on behalf of Blue Cross Blue  
3 Shield Association. (ECF #4011)  
4

5 HEARING re Objection to Motion /The Ad Hoc Group of  
6 Individual Victims' (I) Objection to the United States  
7 Trustee's and Certain Public Creditors' Motion for Stay  
8 Pending Appeal and (II) Joinder in the Opposition of the  
9 Official Committee of Unsecured Creditors to Motions for  
10 Stay Pending Appeal (related document(s) 3873, 3972, 3789,  
11 3845) filed by J. Christopher Shore on behalf of Ad Hoc  
12 Group of Individual Victims of Purdue Pharma L.P.  
13 (ECF #4012)  
14

15 HEARING re Memorandum of Law/ Debtors' Memorandum of Law in  
16 Opposition to the Motions for Stays of the Confirmation  
17 Order and the Advance Order Pending Appeal (related  
18 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)  
19 filed by Marshall Scott Huebner on behalf of Purdue Pharma  
20 L.P. (ECF #4014)  
21

22 HEARING re Opposition of the MSGE Group to the Motions to  
23 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
24 3789, 3860, 3845) filed by Kevin C. MacLay on behalf  
25 of Multi-State Governmental Entities Group. (ECF #4016)

1 HEARING re Opposition - Joinder to the Opposition of the  
2 Official Committee of Unsecured Creditors to Motions for  
3 Stay Pending Appeal (related document(s) 4006) filed by  
4 Michael Patrick O'Neil on behalf of Ad Hoc Group of  
5 Hospitals. (ECF #4017)

6  
7 HEARING re Reply to Motion for a Stay of Confirmation and  
8 Trust Advances Orders Pending ;I Appeal (related  
9 document(s) 3801, 3973, 3873, 3972, 3789, 3778, 3860, 3803,  
10 3845) filed by Brian Edmunds on behalf of State Of Maryland.  
11 (ECF #4048)

12  
13 HEARING re Related Documents:  
14 Order signed on 9/15/2021 Granting Motion (I) Authorizing  
15 the Debtors to Fund Establishment of the Creditor Trusts,  
16 the Master Disbursement Trust and Topco, (II) Directing  
17 Prime Clerk LLC to Release Certain Protected Information,  
18 and (III) Granting Other elated Relief (Related Doc# 3484) .  
19 (ECF #3773)

20  
21 HEARING re Modified Bench Ruling On For Confirmation Of  
22 Eleventh Amended Joint Chapter 11 Plan Signed on 9/17/2021.  
23 (ECF #3786)

24  
25

1 HEARING re Findings Of Fact, Conclusions Of Law, And Order  
2 Confirming The Twelfth Amended Joint Chapter 11 Plan Of  
3 Reorganization Of Purdue Pharma L.P. And Its Affiliated  
4 Debtors Signed On 9/17/2021 (related document(s)3726).  
5 (ECF #3787)

6  
7 HEARING re Objection to Motion I Ad Hoc Committee's  
8 Objection to Stay Motions (related document(s)3801, 3873,  
9 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein  
10 on behalf of Ad Hoc Committee of Governmental and Other  
11 Contingent Litigation Claimants. (ECF #4002)

12  
13 HEARING re Declaration of Cheryl Juaire in Support of the  
14 Opposition of the Official Committee of Unsecured Creditors  
15 to Motions for Stay Pending Appeal (related document(s)4006)  
16 filed by Ira S. Dizengoff on behalf of The Official  
17 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
18 al. (ECF #4007)

19  
20 HEARING re Declaration of Kara Trainor in Support of the  
21 Opposition of the Official Committee of Unsecured Creditors  
22 to Motions for Stay Pending Appeal (related document(s)4006)  
23 filed by Ira S. Dizengoff on behalf of The Official  
24 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
25 al. (ECF #4008)

1 HEARING re Motion to Allow/ Debtors' Motion for Leave to  
2 Exceed the Page Limit in Filing Memorandum of Law in  
3 Opposition to the Motions for Stays of the Confirmation  
4 Order and the Advance Order Pending Appeal filed by Marc  
5 Joseph Tabak on behalf of Purdue Pharma L.P. (ECF #4013)

6  
7 HEARING re Declaration of Jesse Del Conte ( related  
8 document( s )4014) filed by Marshall Scott Huebner on behalf  
9 of Purdue Pharma L.P. (ECF #4015)

10  
11 HEARING re Opposition of the MSGE Group to the Motions to  
12 Stay Pending Appeal (related document(s)3801, 3873, 3890,  
13 3789, 3860, 3845) filed by Kevin C. MacLay on behalf of  
14 Multi-State Governmental Entities Group. (ECF #4016)

15  
16 HEARING re Motion for Stay Pending Appeal (related  
17 document(s)3810, 3847) filed by Ronald Bass Sr. (ECF #3860)

18  
19 HEARING re Responses Received:  
20 Objection to Motion/ Ad Hoc Committee's Objection to Stay  
21 Motions (related document(s)3801, 3873, 3972, 3789, 3778,  
22 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc  
23 Committee of Governmental and Other Contingent Litigation  
24 Claimants. (ECF #4002)

25

1 HEARING re Opposition Tribal Group Joinder in Opposition to  
2 Stay Motions filed by Peter D'Apice on behalf of Certain  
3 Native American Tribes and Others. (ECF #4003)

4  
5 HEARING re Opposition of the Official Committee of Unsecured  
6 Creditors to Motions for Stay Pending Appeal (related  
7 document(s)3801, 3873, 3789, 3845) filed by Ira S. Dizengoff  
8 on behalf of The Official Committee of Unsecured Creditors  
9 of Purdue Pharma L.P., et al. (ECF #4006)

10  
11 HEARING re Opposition The Ad Hoc Committee of NAS Children's  
12 Joinder to Opposition of the Official Committee of Unsecured  
13 Creditors to Motions for Stay Pending Appeal (related  
14 document(s)4006) filed by Harold D. Israel on behalf of Ad  
15 Hoc Committee of NAS Babies. (ECF #4009)

16  
17 HEARING re Opposition Joinder of the Private Insurance  
18 Ratepayers to Opposition of the Official Committee of  
19 Unsecured Creditors to Motions for Stay Pending Appeal  
20 (related document(s)3801, 3873, 3789, 3845) filed by  
21 Nicholas F. Kajon on behalf of Eric Hestrup, et al.  
22 (ECF #4010)



1 HEARING re Opposition /Joinder (related document(s) 4006)  
2 filed by Lauren Guth Barnes on behalf of Blue Cross Blue  
3 Shield Association. (ECF #4011)  
4

5 HEARING re Objection to Motion /The Ad Hoc Group of  
6 Individual Victims' (I) Objection to the United States  
7 Trustee's and Certain Public Creditors' Motion for Stay  
8 Pending Appeal and (II) Joinder in the Opposition of the  
9 Official Committee of Unsecured Creditors to Motions for  
10 Stay Pending Appeal (related document(s) 3873, 3972, 3789,  
11 3845) filed by J. Christopher Shore on behalf of Ad Hoc  
12 Group of Individual Victims of Purdue Pharma L.P.  
13 (ECF #4012)  
14

15 HEARING re Memorandum of Law/ Debtors' Memorandum of Law in  
16 Opposition to the Motions for Stays of the Confirmation  
17 Order and the Advance Order Pending Appeal (related  
18 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)  
19 filed by Marshall Scott Huebner on behalf of Purdue Pharma  
20 L.P. (ECF #4014)  
21

22 HEARING re Opposition of the MSGE Group to the Motions to  
23 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
24 3789, 3860, 3845) filed by Kevin C. MacLay on behalf  
25 of Multi-State Governmental Entities Group. (ECF #4016)

1 HEARING re Opposition - Joinder to the Opposition of the  
2 Official Committee of Unsecured Creditors to Motions for  
3 Stay Pending Appeal (related document(s) 4006) filed by  
4 Michael Patrick O'Neil on behalf of Ad Hoc Group of  
5 Hospitals. (ECF #4017)

6  
7 HEARING re Related Documents:  
8 Modified Bench Ruling On Confirmation Of Eleventh Amended  
9 Joint Chapter 11 Plan Signed on 9/17/2021.  
10 (ECF #3786)

11  
12 HEARING re Findings Of Fact, Conclusions Of Law, And Order  
13 Confirming The Twelfth Amended Joint Chapter 11 Plan Of  
14 Reorganization Of Purdue Pharma L.P. And Its Affiliated  
15 Debtors Signed On 9/17/2021 (related document(s) 3726) .  
16 (ECF #3787)

17  
18 HEARING re Objection to Motion/ Ad Hoc Committee's Objection  
19 to Stay Motions (related document(s) 3801, 3873, 3972, 3789,  
20 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of  
21 Ad Hoc Committee of Governmental and Other Contingent  
22 Litigation Claimants. (ECF #4002)

23  
24  
25

1 HEARING re Objection to Motion I Ad Hoc Committee's  
2 Objection to Stay Motions (related document(s) 3801, 3873,  
3 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein  
4 on behalf of Ad Hoc Committee of Governmental and Other  
5 Contingent Litigation Claimants. (ECF #4002)

6  
7 HEARING re Declaration of Cheryl Juaire in Support of the  
8 Opposition of the Official Committee of Unsecured Creditors  
9 to Motions for Stay Pending Appeal (related document(s) 4006)  
10 filed by Ira S. Dizengoff on behalf of The Official  
11 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
12 al. (ECF #4007)

13  
14 HEARING re Declaration of Kara Trainor in Support of the  
15 Opposition of the Official Committee of Unsecured Creditors  
16 to Motions for Stay Pending Appeal (related document(s) 4006)  
17 filed by Ira S. Dizengoff on behalf of The Official  
18 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
19 al. (ECF #4008)

20  
21 HEARING re Motion to Allow/ Debtors' Motion for Leave to  
22 Exceed the Page Limit in Filing Memorandum of Law in  
23 Opposition to the Motions for Stays of the Confirmation  
24 Order and the Advance Order Pending Appeal filed by Marc  
25 Joseph Tabak on behalf of Purdue Pharma L.P. (ECF #4013)

1 HEARING re Declaration of Jesse DelConte (related  
2 document(s) 4014) filed by Marshall Scott Huebner on behalf  
3 of Purdue Pharma L.P. (ECF #4015)

4  
5 HEARING re Opposition of the MSGE Group to the Motions to  
6 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
7 3789, 3860, 3845) filed by Kevin C. MacLay on behalf of  
8 Multi-State Governmental Entities Group. (ECF #4016)

9  
10 HEARING re Motion for Stay Pending Appeal filed by Allen J.  
11 Underwood on behalf of Certain Canadian Municipality  
12 Creditors and Canadian First Nation Creditors (ECF #3873)

13  
14 Responses Received:

15 Objection to Motion/ Ad Hoc Committee's Objection to Stay  
16 Motions (related document(s) 3801, 3873, 3972, 3789, 3778,  
17 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc  
18 Committee of Governmental and Other Contingent Litigation  
19 Claimants. (ECF #4002)

20  
21 HEARING re Opposition Tribal Group Joinder in Opposition to  
22 Stay Motions filed by Peter D'Apice on behalf of Certain  
23 Native American Tribes and Others. (ECF #4003)

1 HEARING re Opposition of the Official Committee of Unsecured  
2 Creditors to Motions for Stay Pending Appeal (related  
3 document(s) 3801, 3873, 3789, 3845) filed by Ira S. Dizengoff  
4 on behalf of The Official Committee of Unsecured Creditors  
5 of Purdue Pharma L.P., et al. (ECF #4006)

6  
7 HEARING re Opposition The Ad Hoc Committee of NAS Children's  
8 Joinder to Opposition of the Official Committee of Unsecured  
9 Creditors to Motions for Stay Pending Appeal (related  
10 document(s) 4006) filed by Harold D. Israel on behalf of Ad  
11 Hoc Committee of NAS Babies. (ECF #4009)

12  
13 HEARING re Opposition Joinder of the Private Insurance  
14 Ratepayers to Opposition of the Official Committee of  
15 Unsecured Creditors to Motions for Stay Pending Appeal  
16 (related document(s) 3801, 3873, 3789, 3845) filed by  
17 Nicholas F. Kajon on behalf of Eric Hestrup, et al.  
18 (ECF #4010)

19  
20 HEARING re Opposition /Joinder (related document(s) 4006)  
21 filed by Lauren Guth Barnes on behalf of Blue Cross Blue  
22 Shield Association. (ECF #4011)

23  
24  
25

1 HEARING re Objection to Motion /The Ad Hoc Group of  
2 Individual Victims' (I) Objection to the United States  
3 Trustee's and Certain Public Creditors' Motion for Stay  
4 Pending Appeal and (II) Joinder in the Opposition of the  
5 Official Committee of Unsecured Creditors to Motions for  
6 Stay Pending Appeal (related document(s) 3873, 3972, 3789,  
7 3845) filed by J. Christopher Shore on behalf of Ad Hoc  
8 Group of Individual Victims of Purdue Pharma L.P.  
9 (ECF #4012)

10

11 HEARING re Memorandum of Law/ Debtors' Memorandum of Law in  
12 Opposition to the Motions for Stays of the Confirmation  
13 Order and the Advance Order Pending Appeal (related  
14 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)  
15 filed by Marshall Scott Huebner on behalf of Purdue Pharma  
16 L.P. (ECF #4014)

17

18 HEARING re Opposition of the MSGE Group to the Motions to  
19 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
20 3789, 3860, 3845) filed by Kevin C. MacLay on behalf of  
21 Multi-State Governmental Entities Group. (ECF #4016)

22

23

24

25

1 HEARING re Opposition - Joinder to the Opposition of the  
2 Official Committee of Unsecured Creditors to Motions for  
3 Stay Pending Appeal (related document(s) 4006) filed by  
4 Michael Patrick O'Neil on behalf of Ad Hoc Group of  
5 Hospitals. (ECF #4017)

6  
7 HEARING re Reply to Motion Reply in Support of United States  
8 Trustee's Motion for a Stay of Confirmation Order and  
9 Related Orders Pending Appeal Pursuant to Federal Rule of  
10 Bankruptcy Procedure 8007 (related document(s) 3801, 3972,  
11 3778) filed by Paul Kenan Schwartzberg on behalf of United  
12 States Trustee. (ECF #4050)

13  
14 Related Documents:

15 Modified Bench Ruling On Confirmation Of Eleventh Amended  
16 Joint Chapter 11 Plan Signed on 9/17/2021.  
17 (ECF #3786)

18  
19 HEARING re Findings Of Fact, Conclusions Of Law, And Order  
20 Confirming The Twelfth Amended Joint Chapter 11 Plan Of  
21 Reorganization Of Purdue Pharma L.P. And Its Affiliated  
22 Debtors Signed On 9/17/2021 (related document(s) 3726).  
23 (ECF #3787)

1 HEARING re Objection to Motion/ Ad Hoc Conmlittee's  
2 Objection to Stay Motions (related document(s)3801, 3873,  
3 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein  
4 on behalf of Ad Hoc Committee of Governmental and Other  
5 Contingent Litigation Claimants. (ECF #4002)

6  
7 HEARING re Objection to Motion/ Ad Hoc Committee's Objection  
8 to Stay Motions (related document(s)3801, 3873, 3972, 3789,  
9 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of  
10 Ad Hoc Committee of Governmental and Other Contingent  
11 Litigation Claimants. (ECF #4002)

12  
13 HEARING re Declaration of Cheryl Juaire in Support of the  
14 Opposition of the Official Committee of Unsecured Creditors  
15 to Motions for Stay Pending Appeal (related document(s)4006)  
16 filed by Ira S. Dizengoff on behalf of The Official  
17 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
18 al. (ECF #4007)

19  
20 HEARING re Declaration of Kara Trainor in Support of the  
21 Opposition of the Official Committee of Unsecured Creditors  
22 to Motions for Stay Pending Appeal (related document(s)4006)  
23 filed by Ira S. Dizengoff on behalf of The Official  
24 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
25 al. (ECF #4008)



1 HEARING re Motion to Allow/ Debtors' Motion for Leave to  
2 Exceed the Page Limit in Filing Memorandum of Law in  
3 Opposition to the Motions for Stays of the Confirmation  
4 Order and the Advance Order Pending Appeal filed by Marc  
5 Joseph Tobak on behalf of Purdue Pharma L.P. (ECF #4013)

6  
7 HEARING re Declaration of Jesse DelConte (related  
8 document(s) 4014) filed by Marshall Scott Huebner on behalf  
9 of Purdue Pharma L.P. (ECF #4015)

10  
11 HEARING re Opposition of the MSGE Group to the Motions to  
12 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
13 3789, 3860, 3845) filed by Kevin C. MacLay on behalf of  
14 Multi-State Governmental Entities Group. (ECF #4016)

15  
16 HEARING re Motion for Stay Pending Appeal filed by Ellen  
17 Isaacs (ECF #3890)

18  
19 HEARING re Responses Received:  
20 Objection to Motion/ Ad Hoc Committee's Objection to Stay  
21 Motions (related document(s) 3801, 3873, 3972, 3789, 3778,  
22 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc  
23 Committee of Governmental and Other Contingent Litigation  
24 Claimants. (ECF #4002)

25

1 HEARING re Opposition Tribal Group Joinder in Opposition to  
2 Stay Motions filed by Peter D'Apice on behalf of Certain  
3 Native American Tribes and Others. (ECF #4003)

4

5 HEARING re Opposition of the Official Committee of Unsecured  
6 Creditors to Motions for Stay Pending Appeal (related  
7 document(s)3801, 3873, 3789, 3845) filed by Ira S. Dizengoff  
8 on behalf of The Official Committee of Unsecured Creditors  
9 of Purdue Pharma L.P., et al. (ECF #4006)

10

11 HEARING re Opposition The Ad Hoc Committee of NAS Children's  
12 Joinder to Opposition of the Official Committee of Unsecured  
13 Creditors to Motions for Stay Pending Appeal (related  
14 document(s)4006) filed by Harold D. Israel on behalf of Ad  
15 Hoc Committee of NAS Babies. (ECF #4009)

16

17 HEARING re Opposition Joinder of the Private Insurance  
18 Ratepayers to Opposition of the Official Committee of  
19 Unsecured Creditors to Motions for Stay Pending Appeal  
20 (related document(s)3801, 3873, 3789, 3845) filed by  
21 Nicholas F. Kajon on behalf of Eric Hestrup, et al.  
22 (ECF #4010)

23

24

25

1 HEARING re Opposition /Joinder (related document(s) 4006)  
2 filed by Lauren Guth Barnes on behalf of Blue Cross Blue  
3 Shield Association. (ECF #4011)  
4

5 HEARING re Objection to Motion /The Ad Hoc Group of  
6 Individual Victims' (I) Objection to the United States  
7 Trustee's and Certain Public Creditors' Motion for Stay  
8 Pending Appeal and (II) Joinder in the Opposition of the  
9 Official Committee of Unsecured Creditors to Motions for  
10 Stay Pending Appeal (related document(s) 3873, 3972, 3789,  
11 3845) filed by J. Christopher Shore on behalf of Ad Hoc  
12 Group of Individual Victims of Purdue Pharma L.P.  
13 (ECF #4012)  
14

15 HEARING re Memorandum of Law / Debtors' Memorandum of Law in  
16 Opposition to the Motions for Stays of the Confirmation  
17 Order and the Advance Order Pending Appeal (related  
18 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)  
19 filed by Marshall Scott Huebner on behalf of Purdue Pharma  
20 L.P. (ECF #4014)  
21

22 HEARING re Opposition of the MSGE Group to the Motions to  
23 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
24 3789, 3860, 3845) filed by Kevin C. MacLay on behalf  
25 of Multi-State Governmental Entities Group. (ECF #4016)

1 HEARING re Opposition - Joinder to the Opposition of the  
2 Official Committee of Unsecured Creditors to Motions for  
3 Stay Pending Appeal (related document(s) 4006) filed by  
4 Michael Patrick O'Neil on behalf of Ad Hoc Group of  
5 Hospitals. (ECF #4017)

6  
7 Related Documents:

8 Modified Bench Ruling On Confirmation Of Eleventh Amended  
9 Joint Chapter 11 Plan Signed on 9/17/2021.  
10 (ECF #3786)

11  
12 HEARING re Findings Of Fact, Conclusions Of Law, And Order  
13 Confirming The Twelfth Amended Joint Chapter 11 Plan Of  
14 Reorganization Of Purdue Pharma L.P. And Its Affiliated  
15 Debtors Signed On 9/17/2021 (related document(s) 3726) .  
16 (ECF #3787)

17  
18 HEARING re Objection to Motion/ Ad Hoc Committee's Objection  
19 to Stay Motions (related document(s) 3801, 3873, 3972, 3789,  
20 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of  
21 Ad Hoc Committee of Governmental and Other Contingent  
22 Litigation Claimants. (ECF #4002)

23  
24  
25

1 HEARING re Objection to Motion/ Ad Hoc Committee's Objection  
2 to Stay Motions (related document(s) 3801, 3873, 3972, 3789,  
3 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of  
4 Ad Hoc Committee of Governmental and Other Contingent  
5 Litigation Claimants. (ECF #4002)

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7 HEARING re Declaration of Cheryl Juaire in Support of the  
8 Opposition of the Official Committee of Unsecured Creditors  
9 to Motions for Stay Pending Appeal (related document(s) 4006)  
10 filed by Ira S. Dizengoff on behalf of The Official  
11 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
12 al. (ECF #4007)

13  
14 HEARING re Declaration of Kara Trainor in Support of the  
15 Opposition of the Official Committee of Unsecured Creditors  
16 to Motions for Stay Pending Appeal (related document(s) 4006)  
17 filed by Ira S. Dizengoff on behalf of The Official  
18 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
19 al. (ECF #4008)

20  
21 HEARING re Motion to Allow/ Debtors' Motion for Leave to  
22 Exceed the Page Limit in Filing Memorandum of Law in  
23 Opposition to the Motions for Stays of the Confirmation  
24 Order and the Advance Order Pending Appeal filed by Marc  
25 Joseph Tabak on behalf of Purdue Pharma L.P. (ECF #4013)

1 HEARING re Declaration of Jesse DelConte (related  
2 document(s) 4014) filed by Marshall Scott Huebner on behalf  
3 of Purdue Pharma L.P. (ECF #4015)

4

5 HEARING re Opposition of the MSGE Group to the Motions to  
6 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
7 3789, 3860, 3845) filed by Kevin C. MacLay on behalf of  
8 Multi-State Governmental Entities Group. (ECF #4016)

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: Okay, good morning. This is Judge  
3 Drain. We're here in In re Purdue Pharma, L.P., et al on  
4 the hearing on motions for a stay pending appeal of the  
5 Court's confirmation order, as well as the Court's, what  
6 I'll refer to as implementation procedures order filed by  
7 the United States Trustee, the States of Washington,  
8 Connecticut, and California, certain Canadian creditors, Ms.  
9 Ellen Isaacs, and Mr. Ronald Bass.

10 So I believe I've reviewed all of the relevant  
11 pleadings on these motions, including the various objections  
12 and the replies and the declarations submitted in support of  
13 the objections.

14 I'll also note my order dated November 3, 2021  
15 establishing procedures for this remote hearing, which is  
16 being held entirely remotely. For those participating in  
17 the hearing as a movant or objectant by Zoom for Government  
18 and, otherwise, by telephone.

19 So I'm happy to proceed with the motions, unless  
20 there's been any development on them, which I had encouraged  
21 the last time the parties were before me as a way  
22 potentially to resolve these motions.

23 MR. HIGGINS: Your Honor, this is Ben Higgins for  
24 the U.S. Trustee. I'm joined today by my colleague, Beth  
25 Levine from the U.S. Trustee's Washington office, and she'll

1 be handling the oral argument for the U.S. Trustee.

2 We had two housekeeping issues to flag for Your  
3 Honor, but we don't have a resolution of the stay motions,  
4 to answer Your Honor's question directly.

5 THE COURT: All right, very well. On the  
6 housekeeping, the request to exceed page limits on various  
7 pleadings?

8 MR. HIGGINS: That is the first item, yes, Your  
9 Honor.

10 THE COURT: Okay. And the Debtors made such a  
11 motion too. I'll grant both of those motions.

12 MR. HIGGINS: Thank you, Your Honor.

13 The second housekeeping issue, as we previewed for  
14 Your Honor at the October 14 status conference, we did file  
15 a amended memorandum of law at Docket No. 3972 with specific  
16 citations to documents.

17 And we also, as we discussed at the October 14  
18 hearing, we filed two designations at Docket Nos. 3918 and  
19 4043, identifying specific documents that are either in the  
20 record and that we're asking the Court to take judicial  
21 notice of. We haven't received any objections, but if we  
22 did, I know Your Honor raised a couple of questions at the  
23 last status conference.

24 So to the extent I can clarify anything or address  
25 any questions, I'm happy to do that, Your Honor.



1 THE COURT: I think you reduced the list to  
2 address my concerns, which were that you were seeking that I  
3 take judicial notice of matters that were not appropriate to  
4 take judicial notice of, namely press accounts and the like,  
5 correct?

6 MR. HIGGINS: Well, just to be clear, Your Honor,  
7 the second designation was actually a supplement to the  
8 first designation, so we were still asking you to take  
9 judicial notice of what we listed in the first designation.  
10 And I can clarify what we're seeking it for, Your Honor, and  
11 you can determine if it's appropriate or not. You know,  
12 we're happy to live with your decision on that.

13 THE COURT: Okay. Why don't you do that.

14 MR. HIGGINS: Sure, Your Honor.

15 So I believe the items that you raised issues  
16 with, we listed some pending legislation, as well as the  
17 records of some of congressional hearings concerning the  
18 validity of third-party releases.

19 And we're asking you to take judicial notice  
20 merely for the fact that the validity of third-party  
21 releases is an issue of public interest and they're publicly  
22 available documents, and we're simply asking you to take  
23 judicial notice of the fact these materials exist. That's  
24 the limit of it and we're willing to live with Your Honor's  
25 decision either way, but that's the request, Your Honor.

1 THE COURT: Okay. Do any of the objectors have a  
2 view on this?

3 MR. KAMINETZKY: Not quite sure about judicial for  
4 what purpose he's offering them judicial notice. Your Honor  
5 is welcome to notice that.

6 THE COURT: Okay.

7 MR. KAMINETZKY: The rest of -- what I saw most of  
8 what's been submitted are various pleadings from this case,  
9 we don't have a problem with that.

10 THE COURT: Right, and I have no problem with  
11 those pleadings or with pleadings filed in other courts, as  
12 long as they're not being -- sought to be admitted for the  
13 truth of the pleadings as opposed to just the fact that  
14 these are pleadings that have been filed.

15 MR. HIGGINS: And that's correct.

16 MR. KAMINETZKY: With respect to newspaper  
17 accounts, I'm not sure what the point is. Is it for  
18 evidentiary purposes? I'm just struggling to understand  
19 what exactly the request of the Court is before we made an  
20 objection or not.

21 MR. HIGGINS: Sure. I'm not sure there are any  
22 newspaper accounts, Your Honor.

23 THE COURT: I don't think there are at this point,  
24 and maybe there never were. I thought I saw one that you  
25 had submitted, although they were included, I believe, in

1 the record of the hearing.

2 I will take judicial notice of the bill and the  
3 hearing for the fact that they took place, not for anything  
4 as far as the hearing is concerned that any other  
5 evidentiary purpose or for which they might be asserted.

6 MR. HIGGINS: Thank you, Your Honor. Those are  
7 the housekeeping issues from the U.S. Trustee's perspective.

8 THE COURT: Okay, very well.

9 MR. EDMUNDS: Your Honor, Brian Edmunds for  
10 Maryland. I don't -- it may be helpful if I address a  
11 threshold issue from our reply first. I think the Court  
12 will probably want to hear what everyone has to say anyway.

13 But logically, the one issue which is the effect  
14 of the District Court's decision on the Trustee's and  
15 Canadian entities' motion for a stay in that Court limits, I  
16 think, what is before the Court today.

17 Because there's a clear ruling, an unappealed  
18 ruling, a ruling, in fact, that the appellees acquiesced  
19 from the District Court that holds that there's a likelihood  
20 of success on the merits and that the issue raised by the  
21 Trustee, which is the issue of equitable mootness, raises  
22 when the Debtors or appellees are actually doing something  
23 that the balance of hardships would tip decidedly in the  
24 Trustee's and the Canadian entities' favor.

25 And so, there's a finding, and there's a finding

1       that in the end denies those parties' motion for a stay  
2       because the District Court found that there's nothing going  
3       on right now. But you found that without prejudice to the  
4       states making motions and to the U.S. Trustee coming forward  
5       with evidence that something is happening now. So it's  
6       without prejudice to that showing or to those showings, and  
7       she does not decide the states' motions, which had not been  
8       formally brought before her.

9               But to the extent she rules on that equitable  
10       mootness issue and addresses the likelihood of success on  
11       the merits is raised in the other parties' motions before  
12       that Court, those findings are her decision. And I'm not  
13       sure that, you know, there's any -- they could have  
14       appealed, but I think that they become law of the case in  
15       light of the fact that they haven't.

16              And they've, in fact, filed a stipulation in the  
17       District Court essentially doing -- purporting to comply  
18       with the conditions that the District Court placed in its  
19       denial of the stay, so that issue, I think, is the threshold  
20       matter.

21              And I understand the Court is likely to hear  
22       everybody, but just as a logical matter, it seemed important  
23       to raise that first.

24              THE COURT: I'm looking for my copy --

25              MR. EDMUNDS: Your Honor, if it's helpful --

1 THE COURT: I'm looking for that copy of that  
2 order. This was an issue that really was, if anything,  
3 touched on in a reply, so you've caught me a little bit  
4 unprepared on this, Mr. Edmunds, but I want to get out the  
5 order.

6 MR. EDMUNDS: I'm sorry, Your Honor. I mean, we  
7 filed our motion before we were in the District Court.

8 THE COURT: I know.

9 MR. EDMUNDS: But if you need the opinion --

10 THE COURT: I'm not faulting you for not raising  
11 it when you did then, but I want to make sure I have Judge  
12 McMahon's order in front of me, which I am leafing through.  
13 Well, here it is. I found it.

14 MR. EDMUNDS: I think it might be attached to our  
15 reply as an exhibit. If it's helpful, Your Honor, I think  
16 the relevant language --

17 THE COURT: No. I'm reading -- let me read it --

18 MR. EDMUNDS: Okay.

19 THE COURT: -- as to the points that you're  
20 specifically raising.

21 MR. EDMUNDS: Sure.

22 THE COURT: Well, again, I've just reread it. And  
23 on the two points that you've raised, Mr. Edmunds, that you  
24 say would be law of the case, the first one is whether the  
25 merits prong has been satisfied. And there, Judge McMahon

1       says, "In this case, Debtors conceded at oral argument on  
2       October 12 the existence of sufficiently serious questions  
3       going to the merits to make them a fair ground for  
4       litigation."

5               The other point that you raised, however, as far  
6       as the possibility of equitable mootness is in the context  
7       of the balance of hardship and not as to a finding as to  
8       whether equitable mootness has risen above the level of  
9       speculation.

10              So I think it's a little more -- maybe I didn't  
11       hear you clearly enough, but I think it's a little more  
12       complicated than you stated. I think that issue of  
13       irreparable harm and its relation to equitable mootness and  
14       the issue of the balance of the harms and its relation to  
15       equitable mootness are not exactly the same issue. And  
16       secondly, I think they're both quite context specific as far  
17       as the record before the Court.

18              The case law seems to be uniform that the risk of  
19       equitable mootness -- and of course, that's an evaluation  
20       that the Court needs to make and that clearly is not law of  
21       the case as far as Judge McMahon's order -- standing alone  
22       or vel non is not irreparable harm or arguably harm but  
23       needs to be taken into account with other factors.

24              So it seems to me that the record before me is  
25       important still on that point.

1           If the objectors are arguing that the risk of  
2       equitable mootness just isn't to be taken into account, I  
3       completely agree with you; in fact, I wouldn't need Judge  
4       McMahon's ruling because it is to be taken into account.  
5       But I don't think it's dispositive on this point, given the  
6       different record before her and before me.

7           So I think the thing we should probably focus on,  
8       although I'm happy to hear you more on this, is the effect  
9       of the Debtors' concession. I mean, both -- not both -- all  
10      parties have spent a considerable amount of time,  
11      notwithstanding that concession, arguing the merits of the  
12      appeal, both in the motions themselves, which again I  
13      repeat, were made before the hearing before Judge McMahon,  
14      but also in the replies.

15           So I was going to suggest to the parties that they  
16      spend the vast bulk of their time not addressing the merits,  
17      but rather, addressing the other three factors and the bond  
18      issues. But why don't I hear from the objectors on the  
19      merits point in the first case as to whether their  
20      concession should be viewed as a concession for this hearing  
21      as well.

22           MR. EDMUNDS: Sure, Your Honor. Let me just --  
23      you've read it the same way, I think, we have, which is that  
24      there is a fact issue on the balance of hardships and that  
25      the question of whether, you know, the possibility of

1 equitable mootness vel non is a, you know, irreparable harm  
2 question, is decided by her and that equitable mootness  
3 could pose irreparable harm, but the fact issues are still  
4 left open as to what's happening now.

5 So I think -- I'm not saying -- I wasn't saying  
6 anything different and I think that we've read it the same  
7 way.

8 THE COURT: Well, maybe with one qualification,  
9 Mr. Edmunds. Based on my review of the case law, and I  
10 don't think Judge McMahon is saying anything different, the  
11 weight to be given to the risk of equitable mootness  
12 constitute two ways: first, the way that we clearly agree  
13 on, which is the Court needs to evaluate how likely it is  
14 that something would become equitably moot; the second is  
15 whether -- and this second point is very closely tied to the  
16 first point -- I think the more likely it is that something  
17 becomes equitably moot, the less important it is to  
18 establish something in addition to the risk of mootness.

19 And nevertheless, I do think that is a second  
20 inquiry because I believe all the courts, including the  
21 Adelpia court and St. Johnsbury Trucking court have said  
22 standing alone, the risk of equitable mootness isn't enough.  
23 But what needs to be shown, in addition to that, can be any  
24 one of the other factors, it seems to me. It can be the  
25 seriousness of the issues on appeal; it can be the issue of



1       whether a reversal as appear at victory.

2               You know, there are all sorts of things that can  
3       affect that extra something that I think all the courts  
4       recognize you need to have in addition to just the risk of  
5       equitable mootness. And again, that can be merely the  
6       seriousness of the issues on appeal, and also, the courts'  
7       assessment of the likelihood of success on appeal. If  
8       something really does seem to be maybe not a frivolous  
9       appeal, but a real long shot, then the risk of mootness  
10      really doesn't seem to be something that courts care about.

11              So I think I may go back again to the question,  
12      which is the -- my recommendation was that we not spend a  
13      lot of time on the merits of the appeal, showing of the  
14      substantial possibility of success, and really only as it  
15      pertains to the other three issues.

16              So Mr. Kamenetzky's on the screen. I know there  
17      are other objectors too, but I'll look to you on that point.  
18      You're on mute.

19              MR. KAMINETZKY: Your Honor, good morning.  
20      Benjamin Kaminetzky of Davis Polk for the Debtors.

21              I could just address the effect of Judge McMahon's  
22      order, the kind of contention by Maryland that there's some  
23      sort of law of the case or issue preclusion because I think  
24      that's just completely inherently wrong. If you want, I can  
25      go further, but I just think it's important that we address

1 that upfront because Mr. Edmunds suggested something that  
2 just, it's just completely and utterly false. If I could  
3 get two minutes on that.

4 And then, you know, I assume you'd want them to go  
5 first on the other factors. And I agree that spending a lot  
6 of time on probability of success on the merits, which is  
7 devolved into another oral argument that you've heard for  
8 hours now, are so -- on the point, just Mr. Edmunds point.  
9 Again, it's just a blatant mischaracterization of Judge  
10 McMahon's decision and what happened. So let me just give  
11 you some context.

12 The U.S. Trustee filed an emergency stay motion  
13 before the District Court on the evening of Friday, October  
14 8th. After entering a TRO based on the U.S. Trustee's  
15 breathless suggestion that something could be happening over  
16 the weekend, Judge McMahon heard that motion the very next  
17 business day without a single brief from the Debtors or any  
18 other party.

19 We had no opportunity -- the Debtors and the plan  
20 proponents had no opportunity to put in any evidence at the  
21 hearing. All the District Court had was the brief that the  
22 U.S. Trustee filed in connection with its Friday night  
23 emergency motion, had no evidence from anyone else, no  
24 briefs from anyone else. They didn't even have the  
25 confirmation hearing transcripts or anything.

1           What Judge McMahon focused on at this emergency  
2           hearing that was held, you know, that Tuesday, which was the  
3           next business day, was -- and the Debtors and the plan  
4           proponents didn't present any argument whatsoever on the  
5           likelihood of success of the appeal. The focus was solely  
6           on whether the movant's evidence might suffer harm in the  
7           interim period between that day and today when Your Honor  
8           will be hearing the stay motion.

9           All of that notwithstanding, the District Court  
10          denied the U.S. Trustee's stay motion the next business day,  
11          as she concluded that the movants had not identified any  
12          concrete harm that will arise between now and November 9  
13          when Judge Drain is scheduled to consider the various stay  
14          motions. That's on Page 12 of her decision.

15          Now, the notion --

16          THE COURT: Okay, so could I just interrupt you?  
17          So you're basically saying that your concession that Judge  
18          McMahon's decision refers to was really just a concession  
19          for purposes of that hearing because you were focusing on  
20          the --

21          MR. KAMINETZKY: It wasn't even that. Judge  
22          McMahon misheard. She didn't have the transcript. What Mr.  
23          Huebner said is even if we give them all three other  
24          factors, they nevertheless lose because there's no harm.  
25          There was a hypothetical which he misheard. We corrected

1 her in a subsequent filing and said, no, we've reviewed the  
2 transcript. It was one of these even if they're right that  
3 there are substantial issues, there's no harm because  
4 nothing would happen between now and November 9, so it was  
5 kind of in that context.

6 And Judge McMahon, as you said, there was a  
7 concession, but there actually wasn't; it wasn't in the  
8 context of an even if they could prove all three other  
9 factors, they certainly can prove imminent harm. And again,  
10 we corrected her on the record. We sent a letter  
11 identifying and pointing that out in the transcript.

12 But more important, the law is very clear what  
13 collateral estoppel means and it doesn't mean. And, I mean,  
14 Second Circuit law here is well developed: Collateral  
15 estoppel only applies if the identical issue was decided in  
16 the prior proceeding. And none of the issues, Your Honor,  
17 none of the issues before the Court today was actually  
18 decided by Judge McMahon.

19 Again, what she was focused on, based on the U.S.  
20 Trustee's emergency motion, is do I need to do something now  
21 before the November 9 hearing before Judge Drain, and she  
22 said no, but that was the entire focus of the hearing. And  
23 as Your Honor knows, nothing could possibly have happened  
24 because the sentencing needs to happen and the effective  
25 date and all that.

1           So there was absolutely no ruling whatsoever on  
2     the balance of harm with respect to an indefinite stay,  
3     which the movants are seeking, or even any sort of stay  
4     beyond November 9.

5           There's also -- you know, we talked about that  
6     there wasn't a concession. There's also collateral estoppel  
7     only applies where there's a full and fair opportunity to  
8     litigate the relevant issues in the first proceeding, and  
9     I'm quoting from Central Hudson Gas & Electric Company, 56  
10    F.3d 359 at 368. Obviously, when on an emergency motion  
11    filed on Friday night when we're imminent on Tuesday  
12    morning, was obviously not a full and fair opportunity to  
13    litigate. So even if it was the same issue, they still  
14    don't get collateral estoppel because the Judge only heard  
15    one side; there was no ability to submit evidence.

16           And finally, Your Honor, it's blackletter law that  
17    collateral estoppel only applies where there was a final  
18    judgment on the merits. And to say this again, this was a  
19    decision on a TRO on a stay motion, not a final judgment on  
20    the merits, and it cannot give rise to collateral estoppel.

21           And, of course, neither the two cases that  
22    Maryland cites in its brief has anything remotely to do with  
23    the preclusive effect of a decision on emergency stay  
24    motion. They both involve prior actions that were litigated  
25    to a final judgment on the merits. In the PCH case that

1       they cite, there was a final and binding decision on the  
2       merits and affirmed on appeal that the relationship between  
3       parties was a joint venture and the Court found that that  
4       was law of the case. And in the other case they cite, the  
5       Central Hudson case, there was a trial and a judgment and  
6       that's when the Court held that there was a collateral  
7       estoppel.

8               So, I mean, I think it speaks volumes that the  
9       actual movants before the District Court didn't even dare  
10      make this argument that there's some collateral estoppel  
11      effect of Judge McMahon's decision. And I see why now  
12      people are -- I mean, it's clear why now, because this is  
13      such a, quite frankly, bizarre argument that somehow on a  
14      TRO emergency motion that there's some sort of binding  
15      decision that's law of the case that prevents Your Honor  
16      from making his own determination I think is just completely  
17      and utterly wrong.

18             And I'll stop now because I don't want to, again,  
19      step on anyone's toes.

20             THE COURT: Okay, all right. Well, I think you've  
21      addressed the point I really wanted you to address, which is  
22      what sort of concession was referred to in that order, and I  
23      think I have the context here in any event. I don't believe  
24      it was a concession, other than for purposes of that  
25      argument and not for purposes of this argument.

1           Although that being said, it appears to me that  
2           the parties should primarily focus on the other three  
3           factors for obtaining a stay pending appeal and assume that  
4           I've reviewed their arguments with respect to the  
5           substantial possibility of success on the merits and still  
6           remain fully aware of how I addressed those issues in my  
7           decision.

8           MR. EDMUNDS: Your Honor, may I respond briefly?

9           THE COURT: Well, I don't think there's -- I think  
10          I've already given my view on this, and I don't think  
11          there's any other thing to say on it. I mean, I'm not sure  
12          there's anything more to be said on it really, unless you  
13          say that somehow that they did concede for all time.

14          MR. EDMUNDS: I don't think it matters whether  
15          it's a concession. I think the District Court made a ruling  
16          on the issue, and it made a determination as to likelihood  
17          of success on the merits and it said that it was not going  
18          to allow the appeal to come equitably mooted.

19          THE COURT: Clearly, the order doesn't say that.  
20          It says the Debtors concede, and the only issue is whether  
21          they conceded for purposes of that argument or for all time,  
22          and I'm satisfied that they did not concede for all time  
23          because I can't imagine they would in that context. There's  
24          no ruling on the likelihood of the merits, no discussion on  
25          the likelihood of the merits here.

1 MR. EDMUNDS: But I would just say we respectfully  
2 disagree, reading the entire opinion that she didn't. But I  
3 understand Your Honor's ruling.

4 THE COURT: Okay.

5 MR. EDMUNDS: I don't need to say more I guess.

6 THE COURT: Okay.

7 MR. EDMUNDS: All right. Thank you, Your Honor.

8 THE COURT: All right. Okay, so I do have a  
9 suggestion for structuring this argument beyond what I've  
10 already said, which is I want the parties to focus on what  
11 sort of stay they are seeking in terms of duration and  
12 activity, and also address it in the light of Bankruptcy  
13 Rule 8025.

14 The parties -- the U.S. Trustee has thrown out  
15 different alternatives, which includes a stay that would be  
16 ordered by me for a relatively brief period after the  
17 District Court's ruling.

18 It's not clear to me whether the three states have  
19 limited their request for a stay in any way or whether  
20 they're seeking a stay by me that would go through  
21 ultimately a final order, which could conceivably be either  
22 denial of certiorari or a ruling by the Supreme Court.

23 And I think this is important in the context again  
24 of Bankruptcy Rule 8025, which is titled, Stay of a District  
25 Court -- or BAP, but the focus here's on the District Court



1 of course -- Judgment, which states in (a): "Unless the  
2 District Court orders otherwise, its judgment is stayed for  
3 14 days after entry." And I'll also note in that regard (c)  
4 of Rule 8025, which says that if the District Court enters a  
5 judgment affirming an order of judgment or a decree of the  
6 Bankruptcy Court, a stay of the District Court's judgment  
7 automatically stays the Bankruptcy Court's order, judgment,  
8 or decree for the duration of the appellate stay.

9 And then Rule 8025(b) states, is headed for a stay  
10 pending appeal to the Court of Appeals and states in (1) in  
11 general: "When a party's motion and notice to all other  
12 parties to the appeal, the District Court may stay its  
13 judgment pending an appeal to the Court of Appeals." In  
14 (2), it says, "Time limit. The stay must not exceed 30 days  
15 after the judgment is entered, except for cause shown," and  
16 then it says, "Stay continued if before a stay expires. The  
17 party who obtained the stay appeals to Court of Appeals, the  
18 stay continues until final disposition by the Court of  
19 Appeals."

20 And then finally, (d) states: "This rule does not  
21 limit the power of the Court of Appeals or any of its judges  
22 to do the following, including: a stay; stay proceedings  
23 while an appeal is pending; suspending, modifying, restore,  
24 vacating, or granting a stay while an appeal is pending; or  
25 issue any order appropriate to preserve the status quo or

1 the effectiveness of any judgment to be entered."

2 So clearly, appeals from Bankruptcy Court orders  
3 should generally and ordinarily be, where there's a motion  
4 seeking a stay, that motion should be brought first in the  
5 Bankruptcy Court, and courts regularly deny such motions if  
6 they are not brought first in the Bankruptcy Court unless  
7 there's a legitimate reason to do so. But 8007 pertains to  
8 a motion for a stay of a judgment, order, or decree of the  
9 Bankruptcy Court pending appeal.

10 So I have a serious concern that any request for a  
11 stay pending appeal beyond the District Court's ruling is  
12 not really properly before me or it shouldn't be decided by  
13 me -- maybe that's a better way to phrase it -- given Rule  
14 8025.

15 So let me first ask, is anyone looking for relief  
16 beyond a stay up to the time that the District Court rules?

17 MS. LEVINE: Your Honor, this is Beth Levine for  
18 the United States Trustee.

19 We have asked for relief beyond that. We think,  
20 as we argued in our papers, that this Court has the  
21 authority, both under Rule 8007 and its inherent authority  
22 to control its docket, to stay its own orders, to enter a  
23 stay pending a conclusion of the appellate process, so we  
24 have asked for that full relief of a stay pending the  
25 conclusion of the appellate process or, in the alternative,

1 pending the District Court's decision. So we have asked for  
2 that additional relief.

3 THE COURT: Right. Although I don't think you  
4 addressed Rule 8025 or the case law interpreting it.

5 MS. LEVINE: Your Honor, I think we addressed the  
6 language in 8025, which is different. You know, Rule 8007  
7 does not have the limiting language that refers to the  
8 duration of the stay that Rule 8025 does. 8025 refers to  
9 the District Court's stay of another court, the Bankruptcy  
10 Court's order, which I think is a somewhat different thing  
11 than a Bankruptcy Court staying its own order, and that  
12 you've got that discretion to stay your own order pending  
13 the appeals.

14 Certainly, you've got the discretion to determine  
15 how long that stay should be, but we are asking for that  
16 stay for the full duration of the appellate process, with  
17 the alternative request for a stay at least until the  
18 District Court has made its decision.

19 THE COURT: Okay.

20 MS. LEVINE: Your Honor, would you like me to  
21 proceed with our motion now or to hear from others on that  
22 at this point?

23 THE COURT: Well, let me just make sure, as far as  
24 the three states are concerned, are you looking for a stay  
25 through the entire course of any appellate process?

1 MR. EDMUNDS: Maryland is, Your Honor, and we'd  
2 agree with what Ms. Levine just argued.

3 THE COURT: Okay.

4 MR. GOLD: Your Honor, Matthew Gold from Kleinberg  
5 Kaplan representing State of Washington and Connecticut.

6 We agree with what Ms. Levine said, our original  
7 requests, so that there was no question was for the broader  
8 stay. But our alternative position minimum, if you would,  
9 is that we have a stay that preserves the status quo and  
10 leaves the positions intact so that it can be decided by the  
11 District Court or any higher Court when the issue gets put  
12 to them.

13 THE COURT: Okay.

14 MR. ESKANDARI: Bernie Eskandari on behalf of  
15 California, Your Honor. I may have misheard at the  
16 beginning of the hearing, you included California with --

17 THE COURT: No. If I did, it was a mistake.

18 MR. ESKANDARI: Thank you.

19 THE COURT: It's just Washington and Connecticut  
20 and Maryland. Sorry to give you a heart attack there.

21 MR. GOLDMAN: Your Honor, if I may add -- Irv  
22 Goldman, Pullman & Comley, for the State of Connecticut.

23 Just to note, Bankruptcy Rule 8007 does embrace  
24 motions not only to the Bankruptcy Court but to the District  
25 Court, so I would contend it does contemplate a stay pending

1 appeal through the Circuit. And there's no limiting  
2 language in Bankruptcy Rule 8000(a)(1)(A) as to what is  
3 meant by pending appeal, so it's open ended. I would just  
4 add that point.

5 THE COURT: Okay. Well, I will note that there  
6 are a number of decisions that rule otherwise, including In  
7 re Russo, 2017 B.R. Lexis 544 at 5-6 (Bankr. C.D. Cal, Feb.  
8 27, 2017), In re VCR I, LLC 2019 B.R. Lexis 3376 at 27  
9 (Bankr. S.D. Miss., Oct. 28, 2019), and In re Schupbach  
10 Investments, LLC 2016 B.R. Lexis 836 at 5-6 (Bankr. D.  
11 Kans., March 17, 2016), In re Howell-Robinson, 2008 WL  
12 5076975 at 2 (Bankr. D.D.C. July 30, 2008), and Culwell v.  
13 Texas Equipment Co. (In re Texas Equipment Co.) 283 B.R.  
14 222, 230-31 (Bankr. N.D. Texas 2002).

15 I will note that Judge Roman in this District left  
16 the issue open in Credit One Bank, N.A. v. Anderson (In re  
17 Anderson) 560 B.R. 84, 88 (S.D.N.Y. 2016). Although rather  
18 than the Bankruptcy Court decide the motion, which was made  
19 to him, in the alternative under either 8007 or 8025, he  
20 decided the motion himself under 8025 after his ruling and  
21 denied the motion on the merits for a stay.

22 But I think it's important, and I believe it's  
23 consistent actually with Judge McMahon's approach, for the  
24 parties to focus on the two alternative forms of stay that  
25 the parties are seeking here: their preferred one, which is

1 through the entire appellate process, and alternatively,  
2 through the District Court's ruling.

3 Because the determination of the issues and, in  
4 particular, the three factors other than on the merits, to  
5 my mind, could be quite different depending on whether it's  
6 a stay through the District Court's ruling or a stay through  
7 either denial of cert or a ruling by the Supreme Court,  
8 which obviously would take a significantly longer amount of  
9 time.

10 And on the merits issue, obviously a trial judge  
11 that is faced with a request for a stay pending appeal is  
12 always in the awkward position of evaluating the merits of  
13 the trial judge's own opinion -- that isn't a problem for  
14 the District Judge -- and makes that review, I think, much  
15 more, in some ways at least, if on a psychological basis,  
16 more meaningful.

17 So I really do want the parties to focus on those  
18 two different durations for a stay, and so, you should  
19 address your arguments accordingly.

20 So I don't know if you decided who was going to go  
21 first, whether it's Ms. Levine or counsel for one of the  
22 three states, but one of you should go ahead.

23 MS. LEVINE: Your Honor, I'm ready to proceed.  
24 Thank you. This is Beth Levine again with the Department of  
25 Justice for the United States Trustee.

1 I'll save my introductory remarks. You know why  
2 we're here. I will skip over much on the likelihood of  
3 success on your direction.

4 I wanted to say one thing, which is that Judge  
5 McMahon in Footnote 4 on Page 10 of her decision, you know,  
6 said that she considered it obvious that there are serious  
7 questions going to the merits and making the fair ground for  
8 litigation. We think that is true.

9 You know, certainly, we don't expect you to agree  
10 that you've erred. We know you disagree with our legal  
11 position. But we think there are very serious questions and  
12 that they merit appellate review and that the denial of that  
13 appellate review, if there were a dismissal based on  
14 equitable mootness, would be irreparable harm.

15 And it's not just the denial of appellate review  
16 vel non itself; it's because you have claims here that are  
17 being eliminated without consent that would be permanently  
18 irreparably gone without that appellate review.

19 THE COURT: Well, can we focus on that for a  
20 second? First, you went -- and I'm responsible for this  
21 since I told the parties not to focus substantially on the  
22 merits -- you went very quickly from that to the issue of  
23 irreparable harm.

24 And I just -- I want to be upfront with everyone.  
25 It seems to me that there are, in fact, issues going to the

1 merits that are somewhere between, you know, a mere  
2 possibility of success and a probability of success. I  
3 think many of the issues raised by the U.S. Trustee and the  
4 three states do not fall into that category; that, in fact,  
5 they are unlikely to prevail on appeal. Those go to the  
6 524(e) point, the due process point, and their assessment of  
7 the merits of the settlement.

8 But I agree that the issue of a release of third-  
9 party claims is, in every instance, a serious issue that  
10 requires a Court to sift through complicated legal and  
11 factual considerations. And the limits, in particular, on  
12 what types of claims that would belong to a third party,  
13 i.e., not the Debtors' estate, that can be appropriately,  
14 legally enjoined requires serious parsing of the case law  
15 and is certainly something that even the Second Circuit case  
16 law recognizes as an issue where the lower court can get it  
17 wrong, as was the case in Metromedia and Carter and other  
18 decisions which recognize the underlying principle that the  
19 Court has power to enjoin third-party claims. But drawing  
20 the line as to what claims can be enjoined and what can't is  
21 something that courts can well disagree on.

22 So on that point -- unlike on the due process, the  
23 jurisdictional points, the 524 point, frankly, even the  
24 state sovereignty point, all of which I think are unlikely  
25 to prevail on appeal -- this issue as to how released claims



1 are to be cabined is, I believe, one that does satisfy the  
2 requirement to show a strong showing of likelihood to  
3 succeed on the merits, such that there's a fair ground for  
4 litigation.

5 Although again, as recognized, for example, by  
6 Judge Chapman in *In re Sabine Oil & Gas Corp.*, 551 B.R. 132,  
7 143 (Bankr. S.D.N.Y. 2016), the focus on the degree of  
8 likelihood of success is tempered by the balance of the  
9 harms or the Court's assessment of the balance of the harms.

10 So I suppose the objectors can try to persuade me  
11 to the contrary, but I think that I want to turn then to the  
12 irreparable harm point that you were starting to make. And  
13 the argument you made is that the people and governmental  
14 entities that objected to the release or injunction would  
15 lose their rights if a stay was not granted.

16 And again, this goes to my direction to you all to  
17 focus on the two different times for the stay. I confess  
18 I'm having a hard time seeing how that would be the case if  
19 the stay were granted or not granted either way through the  
20 date of the District Court's ruling with the additional 14  
21 days that are added on under Rule 8025.

22 And further, I'm having a hard time, although  
23 maybe not as hard, with the argument that equitable mootness  
24 really would occur here if a stay were not granted through  
25 the date of the entire appellate process. I guess that

1 depends, in some measure, upon whether the plan is  
2 substantially consummated.

3 But as far as the release is concerned, the  
4 majority of the payments by the released parties, as you  
5 yourself point out, occurs substantially down the road, and  
6 under the plan, they have a credit only for what they've  
7 paid in the interim.

8 So it seems to me under either scenario too broad  
9 to say that these people who the U.S. Trustee says that he's  
10 speaking on behalf of would lose their rights. They would  
11 only lose it if there's equitable mootness, right?

12 MS. LEVINE: Your Honor, that is the primary  
13 concern, that is if there is equitable mootness and there's  
14 not a review on the merits, they would lose their rights  
15 that would otherwise --

16 THE COURT: Well, there's no other concern, right?  
17 I mean, it's just based on equitable mootness, nothing else.

18 MS. LEVINE: Your Honor, I think there's also a  
19 concern about what's going to happen in the interim is, you  
20 know, defendants' move to dismiss based on these releases,  
21 for example. As noted in our brief and one of the cases  
22 that's pending, one of the defense had suggested that the  
23 releases apply. This was prior to the Court's decision, so  
24 it was a different context. But we don't know how that  
25 would play out and whether cases would be dismissed with

1 prejudice in the intervening time, so I think there is that  
2 risk. But our primary concern is the equitable mootness  
3 risk that would make it irreparable if there's no longer a  
4 possibility of review on the merits.

5 THE COURT: So there are -- but that wouldn't  
6 really happen until the effective date of the plan, right?

7 MS. LEVINE: Your Honor, it's my understanding  
8 that the releases become effective on the effective date.

9 THE COURT: Right.

10 MS. LEVINE: So what we want to avoid happening --  
11 but if the appeals dismissed without a review on the merits,  
12 that effective date is going to come and go, and the Debtors  
13 have --

14 THE COURT: But I'm asking you to focus on that if  
15 and how likely that's to happen.

16 MS. LEVINE: Yes, Your Honor. So focusing first  
17 on the timing of the District Court's decision, Your Honor.  
18 Under the plan -- well, first of all, they've argued that  
19 it's not just the effective date that may cause equitable  
20 mootness. They have very specifically preserved their  
21 rights to argue that the criminal sentencing, which will  
22 happen before the effective date, can be a basis for  
23 equitable mootness.

24 THE COURT: What do we think about that? I mean,  
25 that's under a separate plea agreement; that's not under the

1 plan.

2 MS. LEVINE: Your Honor, it obviously raises a  
3 concern because they've indicated they're going to argue it.  
4 But our concern is also, you know, they've said nothing else  
5 that's happening before the effective date can constitute  
6 equitable mootness, and we've got two concerns about that,  
7 Your Honor. One is, as we've stated, you know, their  
8 stipulation about that doesn't bind the Second Circuit, it  
9 doesn't bind other parties.

10 We've had other parties that haven't signed the  
11 stipulation that have filed oppositions to motions to stay.  
12 We've asked multiple times what's happening. We haven't  
13 gotten a response. So we don't know what's going on that  
14 someone else might look to and say, you know, is the basis  
15 of an equitable mootness argument.

16 But the other thing we're concerned about, Your  
17 Honor, is --

18 THE COURT: But how could any of those things --  
19 I'm sorry to interrupt you. But how could any of those  
20 things be substantial consummation?

21 MS. LEVINE: Your Honor, I don't think there'll be  
22 substantial consummation, but under Second Circuit law, the  
23 test is a substantial or comprehensive change in  
24 circumstances. And, you know, clearly, the Debtors think  
25 that something can happen before substantial consummation

1 that would support equitable mootness because they said they  
2 might argue that based on sentencing.

3 And the concern, Your Honor, is it may be that,  
4 you know, they have said they've structured this so that  
5 they have time between the confirmation and the sentencing  
6 to get certain things done, that they want to get certain  
7 things done before they are sentenced. We don't have  
8 clarity on what those things are.

9 But we don't know, you know, what pre-effective  
10 date activity is going to open the door to sentencing or  
11 pre-effective date activity they're going to say is well,  
12 you know, say it's transferring assets to NewCo.  
13 Transferring assets to NewCo on its own, they might say,  
14 well, that can be undone. But then after we get past  
15 sentencing, we don't know what their argument is. Is it  
16 going to be that well, now that it's been sentenced, that  
17 asset transfer can't be undone?

18 So we don't really know how these things interplay  
19 together, which makes us very concerned about when, you  
20 know, not just the effective date, but also the sentencing.  
21 And also what else is happening and how those things work  
22 together so that if we get past sentencing, they're going to  
23 come back and say, oh, well, you know, this other pre-  
24 effective date activity on its own could be reversed, but  
25 now it can be undone. Now that bell cannot be unrung.

1           And so, for all these reasons, we have concerns  
2           about these other activities.

3           THE COURT: But look, the presumption of equitable  
4           mootness, which is when their five-step case in the Second  
5           Circuit case law comes into effect, is where the plan has  
6           been substantially consummated. Generally, courts focus on  
7           the distributions under the plan as that, or transfers to be  
8           made under the plan that cannot be unwound.

9           So far, I'm just hearing sort of vague fears, as  
10          opposed to anything that actually would give rise to any  
11          real risk at all of equitable mootness.

12          MS. LEVINE: Your Honor, we think it's a  
13          substantial risk because of what the Debtors have said  
14          regarding the impact of sentencing, but we also think that  
15          the dates here --

16          THE COURT: Let me -- I mean, Judge Kaplan dealt  
17          with this head on in the St. Johnsbury case. He says to  
18          begin with, the government's failure to concede that its  
19          appeal would be moot absent a stay does not help those  
20          opposing the motion any more than the opponents' failure to  
21          concede that the appeal would not be so moot it harms them.

22          Mootness is a doctrine grounded in constitutional  
23          considerations designed to limit courts to the resolution of  
24          actual controversies, although I think the case law has  
25          moved on since then and the focus is really, for equitable

1 mootness purposes, on the finality of bankruptcy plans.

2 And then he says the parties through additional  
3 proceeding, therefore, cannot determine even by agreement  
4 whether a case is moot; that is for the Court.

5 But again, we're talking about equitable mootness.  
6 I don't think there's any argument that there would be  
7 constitutional mootness here, absent probably well after the  
8 effective date. But as far as equitable mootness is  
9 concerned, I'm just not seeing it.

10 I mean, again, the case law in the Second Circuit  
11 focuses on the five-step test where a plan has been  
12 substantially consummated. Other circuits focus on simply  
13 whether third parties' expectations, i.e., parties who are  
14 not parties to the appeal or on either side of the contested  
15 issues, would be so harmed that the Court would not exercise  
16 what it otherwise has, which is an unflagging duty to  
17 exercise its jurisdiction. And I just... I mean, how would  
18 you undermine the plan by invoking equitable mootness for  
19 things that were done before substantial consummation? It  
20 just seems like a contradiction in terms.

21 MS. LEVINE: Your Honor, as I think the St.  
22 Johnsberry case pointed out, we're in a difficult position.  
23 We don't want to argue against ourselves. We don't think  
24 equipment mootness would or should apply --

25 THE COURT: No, you don't have to --

1 MS. LEVINE: -- but the Debtors --

2 THE COURT: I'm not asking you to argue against  
3 yourselves. But I just don't... But I think here you need  
4 to show me that this harm is not just conjectural.

5 MS. LEVINE: Your Honor, the reason we think it's  
6 more conjectural is based on what the Debtors have said  
7 regarding what they're going to argue about equitable  
8 mootness, and they've pinned it, not just to the effective  
9 date, but to the sentencing date, which under the plan could  
10 be as early as November 1st, which is the day after our  
11 argument in the District Court, with the effective date  
12 really soon after that, as early as December 8th, a week  
13 later.

14 So, you know, talking about the timing and the  
15 proposals that they have offered, you know, we think  
16 certainly we should at the very least get a stay until the  
17 District Court's decision to make sure those dates don't  
18 come and go before the District Court has a chance to rule.  
19 We are going at --

20 THE COURT: Let me focus on that point. If it is  
21 clear that the District Court is going to rule before  
22 substantial consummation of the plan, before the effective  
23 date, why is a stay needed? Why should the Debtors and the  
24 other parties who are in support of the plan be precluded  
25 from laying the groundwork in case the conditions to the



1 effective date do occur, such as setting up new boards,  
2 setting up the trusts, et cetera?

3 I raised this point, you know, the first time that  
4 a stay was asked on an emergency basis, and I'm still having  
5 a hard time seeing how that works. And frankly, if one  
6 looks at Judge McMahon's order, which I'm not doing, but  
7 it's as much in support for that view also, that there  
8 really doesn't seem to be anything that's really going to  
9 really run the risk of equitable mootness until after the  
10 effective date, which it appears, at least, would occur  
11 after Judge McMahon's ruling.

12 Now, I think you acknowledged that the stay you're  
13 seeking would have to be a stay of everything, but could  
14 just be a stay of the effective date, right? Or at least it  
15 doesn't have to be a stay of everything? I don't want to  
16 put words in your mouth. You didn't agree with this to the  
17 other point. You didn't agree that it could just be a stay  
18 of the effective date. But I think you did agree that the  
19 stay of the confirmation order would not have to be a stay  
20 of all of the order in order for there to be no risk of  
21 equitable mootness, right?

22 MS. LEVINE: Your Honor, in our motion we talked  
23 about one specific thing, because one of the opponents had  
24 raised a concern about secreting assets. And you know, we  
25 tried to have this conversation with the Debtors just to

1 find out what are the specific things that you would want  
2 exempted from a stay. And we didn't get an answer to that  
3 question.

4 So if there was a question of other specific  
5 things, those are things we would have to take under  
6 consideration or have authority to agree to any other  
7 specific thing than what we put in our brief.

8 But you know, we understand that Judge McMahon is  
9 moving very, very quickly. We're all moving as quickly as  
10 we can to get the appeal decided quickly. But there's no  
11 guarantee that she is going to decide before a date certain,  
12 particularly when these states are approaching in December.

13 THE COURT: So that would argue just for staying  
14 the effective date until after her ruling, not staying  
15 everything else that the Debtor would be doing to prepare  
16 for the effective date, which isn't really --

17 MS. LEVINE: Well, Your Honor --

18 THE COURT: -- which isn't really under the  
19 confirmation order anyway, because the confirmation order  
20 doesn't really contemplate any material transactions before  
21 the effective date, I think. Right? None have been  
22 identified.

23 MS. LEVINE: Your Honor, the way to stay the  
24 effective date is to stay the confirmation order, because  
25 those are the transactions that lead up to getting to the

1 effective date and --

2 THE COURT: Let me ask --

3 MS. LEVINE: -- lead up to getting to the  
4 sentencing.

5 THE COURT: Let me ask you the question different.  
6 What transactions out of the ordinary course do you believe  
7 they confirmation order authorizes now before the effective  
8 date?

9 MS. LEVINE: Your Honor, the confirmation order  
10 grants a broad authorization to engage in the transactions  
11 that they need to implement the plan. And part of the  
12 problem is we're in the dark on exactly what they're doing.  
13 We want to maintain the status quo because equitable  
14 mootness is an existential threat to our appeal. And  
15 maintaining the status quo is the only way to protect  
16 against that risk of equitable mootness. You know, it's --

17 THE COURT: Do you have any case that stands for  
18 that proposition?

19 MS. LEVINE: I'm sorry, which --

20 THE COURT: That any risk --

21 MS. LEVINE: -- that equitable mootness is --

22 THE COURT: -- any risk of equitable mootness is  
23 enough? In fact, most of the cases say just the opposite of  
24 that. It has to be a real risk, coupled with other things,  
25 or at least something else. Now, maybe that something else

1 here may simply be the significance of ruling on the merits  
2 of the appeal.

3 But it would still seem to me that if you had --  
4 and this is repeated in numerous rulings -- there's one by  
5 Judge Briccetti in U.S. Bank National Association v.  
6 Windstream Holdings, Inc., 2020 U.S. District LEXIS 137183.  
7 Merely invoking equitable mootness as the Appellants have  
8 done here -- a risk that is present in any post-confirmation  
9 appeal of a Chapter 11 plan -- is not sufficient to  
10 demonstrate irreparable harm. If the Court were to credit  
11 this kind of argument for every such request, it would be  
12 forced to review nearly every bankruptcy appeal on an  
13 expedited basis and, of course, grant the motion if some  
14 other factor were established. And he cites there In Re  
15 Calpine Corp., 2008 Bankr. LEXIS 217 (Bankr. S.D.N.Y. Jan.  
16 24, 2008).

17 But there are lots of courts that say that. That  
18 you can't just say there's a risk of equitable mootness and  
19 then get a stay pending appeal. You have to actually focus  
20 on what that risk is and how real it is, and then see how  
21 it's tied into the other factors.

22 And I'm still not seeing it as far as between now  
23 and a date within a reasonable time after Judge McMahon's  
24 ruling, which I think the drafters of the rule have said is  
25 at a minimum 14 days. And that would be just a stay of the

1 effective date. I mean, there's no discussion about how  
2 this plan could be substantially consummated before then.

3 And even then, there's the issue of who are the  
4 people who are harmed by a continued appeal? And if we're  
5 focusing just on the Sacklers, I don't think that's the type  
6 of harm for the shareholder released parties; that's the  
7 type of harm that the courts recognize is a basis for  
8 equitable mootness, because they're in the heart of the  
9 issues that are on appeal. There would have to be other  
10 third parties, legitimate parties who aren't in the dispute  
11 who were being harmed.

12 MS. LEVINE: Your Honor, you know, this sort of  
13 goes back a little bit to where I started, where we think  
14 the harm is the complete elimination of claims that becomes  
15 unreviewable if the appeals are equitably moot.

16 THE COURT: All right. I think we've covered --

17 MS. LEVINE: And --

18 THE COURT: -- this point, because again, I don't  
19 think you really answered my question on how it becomes  
20 unreviewable. I just don't -- I don't see it here. I don't  
21 think you carried your burden of proof on that point, at  
22 least through the date of Judge McMahon's ruling and the  
23 rule stay that goes into effect. And then parties can ask  
24 her if she thinks there's a basis for a further stay in the  
25 Second Circuit. And they will have had the benefit of

1 looking at the issue besides equitable mootness that you're  
2 focusing on, which is the importance of the merits, and can  
3 weigh those themselves.

4 I just -- I don't -- the release isn't going to be  
5 effective until the effective date. So to lose the release  
6 doesn't happen until the effective date.

7 MS. LEVINE: And Your Honor, we think it's --  
8 we're asking for a stay, you know, and in the alternative,  
9 at least a stay through the District Court's decision, to  
10 make sure those dates don't pass, to make sure that we can  
11 this appeal heard on the merits. We think that's critically  
12 important. We think it raises really important issues that  
13 should be heard on the merits.

14 THE COURT: All right. Well, again, I can  
15 understand that argument as far as a stay of the effective  
16 date. I'm still not seeing it as far as a stay of other  
17 actions, which would not be -- I don't believe -- authorized  
18 before the effective date. And I've already ruled, and I  
19 continue to believe, that the advance order is clearly not a  
20 basis for equitable mootness. I mean, it's just -- that  
21 would be -- for a doctrine which is already under legitimate  
22 attack, to rule that that order is a basis for equitable  
23 mootness is just -- I can't imagine it. I mean, I think  
24 that's a frivolous argument. I really can't -- it's just  
25 inconceivable.

1 MS. LEVINE: Your Honor, I appreciate your views  
2 on that. You know, it's our concern that Second Circuit's  
3 not bound, and our hands are tied a little bit because we're  
4 in the dark about what the Debtors are actually doing. We  
5 have asked them --

6 THE COURT: All right. Well, I'll --

7 MS. LEVINE: -- multiple times.

8 THE COURT: -- ask the Debtors.

9 MS. LEVINE: We haven't gotten an answer.

10 THE COURT: I'll ask the Debtors what they believe  
11 they're authorized to do before the effective date to lead  
12 to the argument that the plan is substantially consummated  
13 and, therefore, it would be inequitable for third parties,  
14 not the parties who have the benefit of the release, that  
15 you are appealing, in essence. That's the harm you're  
16 trying to address is your dispute over the legitimacy of the  
17 third-party release. And I think I do have a -- just  
18 because I... Look, the cases are reported for a reason.  
19 The lower courts follow them.

20 So, you know, one reads Charter, one reads  
21 Windstream, one reads the Chateaugay case, and Metromedia.  
22 I mean, these are MPM Silicones. These are published  
23 opinions by the Second Circuit where they lay out when  
24 something will be found to be equitably moot. And it is an  
25 equitable doctrine, and so the facts matter.

1 But, you know, I think actually the trial courts  
2 have been given the job generally to find the facts in light  
3 of the case law, and I just can't imagine that the facts  
4 before me, up at least until the effective date, would lead  
5 the Second Circuit to find that the appeal was rendered  
6 equitably moot.

7 It's just -- there's no effective date, there's no  
8 substantial consummation, there's no sale that's happening  
9 before the effective date, there's no other transaction.  
10 And it just -- it doesn't fit even within the actually  
11 fairly pro-equitable mootness case law in the circuit, which  
12 focuses on the heavy showing someone has to make against  
13 equitable mootness when a plan has been substantially  
14 consummated. This plan isn't even effective, so it's hard  
15 to believe that it could be substantially consummated.

16 Anyway, so why don't we move on to the balance of  
17 hardships and public policy.

18 MS. LEVINE: Your Honor, so on the balance of  
19 hardships, the opposing parties have rested primarily upon a  
20 harm from delay. No one questions the importance of  
21 providing relief to those who have suffered from the opioid  
22 crisis. In our view, that supports a stay. Those who  
23 oppose the plan have also suffered from the opioid crisis.  
24 They have equally pressing interests and abatement and  
25 compensation, but they would have their claims eliminated



1 entirely by the plan, not just delayed.

2 And we don't agree that a stay would cause  
3 significant delay in the context of this case, which has  
4 been pending for over two years, with litigation against  
5 Purdue and the Sackler Family that began before that, where  
6 the appeal is being expedited at a very rapid pace before  
7 the District Court. The argument on that appeal is in just  
8 three weeks. And, of course, if it went to the Second  
9 Circuit, we would seek to expedite it there as well.

10 The United States Trustee is the watchdog, the  
11 congressionally appointed watchdog, acting in the public  
12 interest to try and make sure bankruptcy is not abused.  
13 We're advocating -- we understand you disagree -- but to  
14 ensure that the plan does not transgress the Constitution or  
15 the Code, and we think there's a public interest in having  
16 these issues heard on the merits regarding these third-party  
17 releases, and having, you know, the appellate courts provide  
18 more clarity on the limits of when they're allowed and when  
19 they're not allowed.

20 The Debtors and their allies have relied a lot on  
21 the creditors' support for the plan suggests that a stay  
22 would be against the public interest. The creditors'  
23 support for the plan is not the same thing as the public  
24 interest. It just reflects the interest of the creditors  
25 that voted in favor of the plan.

1           There is a significant public interest in  
2       vindicating the rights of the minority and preventing the  
3       will of the majority from going unchecked by appellate  
4       review. And we think that permanent elimination of the  
5       claims against the consent of the people who did not want to  
6       release these claims outweighs that marginal delay, which,  
7       again, we think -- particularly focusing in on the District  
8       Court decision -- is relatively minimal.

9           THE COURT: Well, let's not focus on the District  
10      Court decision for the moment. Let's focus on when you  
11      believe that -- when do you believe that a final decision  
12      here would be made? And I'm assuming that's through the  
13      Supreme Court process.

14          MS. LEVINE: Yes. If this were to go -- if  
15      someone were to petition for certiorari, it would be to the  
16      Supreme Court for process, and of course, if the Supreme  
17      Court granted cert, that would certainly reflect that these  
18      are significant issues that were review.

19          THE COURT: So have you projected how long that  
20      would take, that process? Are we talking 2024?

21          MS. LEVINE: Your Honor, I don't know the answer  
22      to that.

23          THE COURT: Isn't that important to figure out?

24          MS. LEVINE: I don't know that there's any way to  
25      predict with any kind of certainty how quickly the courts

1 will go, other than we've committed to expediting these  
2 appeals. And you know, that's shown through our actions  
3 with how quickly we are moving in the District Court.

4 THE COURT: Well, does that apply to the Supreme  
5 Court, though? They don't take expedited appeals like this,  
6 do they?

7 MS. LEVINE: Yeah, I don't know exactly what the  
8 process is, Your Honor, but I don't think that the  
9 expediting works in the same way in the Supreme Court. So I  
10 don't have an answer for how long that would be. But, Your  
11 Honor, we do think that these issues are important and that,  
12 you know, a delay from the stay is outweighed by the  
13 elimination of these rights. And that that would be an  
14 irreparable injury for these claims to be eliminated  
15 entirely, without a full review on the merits.

16 THE COURT: And as far as the individuals' rights  
17 are concerned, you assert them -- that they would be  
18 asserted by individual under state consumer protection laws?

19 MS. LEVINE: Some of this -- well, some of the  
20 individual claims are under state consumer protection laws,  
21 Your Honor. Some are under common law. I'm not sure I  
22 quite caught your question.

23 THE COURT: I'm just trying to figure out what the  
24 claims that you're looking to protect are, as far as  
25 individuals' claims.

1 MS. LEVINE: Direct claims, based on the  
2 individual non-debtor conduct for their own misconduct,  
3 breaching a duty directly to the Plaintiffs, such as the  
4 cases that -- the complaints that we cited in our brief,  
5 which allege claims under state consumer protection  
6 statutes, common law fraud, negligence, RICO. There's a  
7 number of claims that have been asserted along those lines  
8 that allege direct participation and direct liability, based  
9 on the individual Defendants' own misconduct.

10 THE COURT: Okay. And that misconduct would be  
11 misconduct in being an officer or director or shareholder of  
12 the Debtors?

13 MS. LEVINE: In the cases that we've cited, yes.  
14 I believe the individual defendants were in those roles.  
15 But the allegations are that they'd reached -- is not just a  
16 sort of veiled piercing, breach of fiduciary duty,  
17 imputation of the company's conduct, but that the  
18 individuals had breached their own duty and engaged in their  
19 own misconduct, making them directly liable to the  
20 Plaintiffs.

21 THE COURT: Have you found any of those cases or  
22 any evidence from the confirmation hearing that shows that  
23 those allegations don't substantially or entirely overlap  
24 with the showing that would be necessary for piercing the  
25 corporate veil or other causes of action that the Debtors

1 would have?

2 MS. LEVINE: Your Honor, the factual allegations  
3 may overlap, but I mean, I think this gets to where we  
4 disagree with what the proper scope of the non-debtor  
5 releases are, and that is something that we think should --  
6 is an important issue that should be reviewed, and one of  
7 the reasons why we're seeking a stay pending appeal.

8 You know, when Metromedia talked about the cases  
9 that have -- the rare cases that have allowed these  
10 releases, they were in circumstances that were more limited.  
11 They were in class actions, like Drexel, which is this is  
12 not -- are aware they were, you know, more surely derivative  
13 claims, such as fraudulent -- you know, claims that were  
14 duplicate fraudulent transfer claims, like in Madoff or  
15 Tronox or in Manville I, where it was directly against the  
16 asset of the estate, and that in the claim was a secondary  
17 insured that was derivative of the primary insureds' claim,  
18 the debtor was the primary insured.

19 So we think that question of whether overlapping  
20 factual allegations is enough to put this within the scope  
21 of a non-debtor release and whether that's the appropriate  
22 scope is an important question, as a question that should be  
23 addressed on appellate review.

24 THE COURT: Well, no, I've already said I believe  
25 that's correct. I'm just trying to figure out here -- and

1       this is in a different context; this is balancing the harms  
2       -- the right of someone to pursue, which on the facts are  
3       duplicate claims or overlapping claims, is so strong,  
4       particularly when they would receive a recovery, at least  
5       which was found under the plan, they wouldn't receive at all  
6       without the settlement, is enough to override the harm  
7       caused by the delay.

8               MS. LEVINE: Your Honor, we think there is harm  
9       here. The claims directly against the Sacklers or other  
10       non-debtors were never valued. And there's a harm to having  
11       the choice of whether to settle --

12              THE COURT: I actually did value them.

13              MS. LEVINE: -- or proofs of that claim are not --

14              THE COURT: I don't know why --

15              MS. LEVINE: -- taken away from you.

16              THE COURT: I don't know why you say that. I  
17       actually did value them in the aggregate. And I considered  
18       those complaints. And I said, given the battle of the  
19       century that would ensue, the settlement was fair. The U.S.  
20       Trustee took no discovery on those issues and didn't make  
21       any case on them. Some of the objecting states did, and I'm  
22       sure Judge McMahon will read carefully the witness testimony  
23       on those points.

24              But I have to say, I am having a hard time seeing  
25       how those claims, which really are overlapping claims as far

1 as I can tell -- and I did the best I could to cabin the  
2 release to make it clear that they would not expand beyond  
3 that -- that the people that you're looking out for would  
4 get any recovery whatsoever in the context where the  
5 settlement was not in place and there would be a litigation  
6 free-for-all.

7 Again, you have the United States getting it  
8 superpriority claim. You have individual states litigating  
9 their claims. And then that's up against a class action  
10 lawyer or two or three, back in the MDL, where there already  
11 was, by the substantial private side in the MDL, a  
12 settlement for a lesser amount, namely \$3 billion.

13 So I'm just having a hard time seeing, other than  
14 the intellectual desire to clarify this issue one way or the  
15 other, how the people who would object to the release of  
16 their claims are harmed more than the people who would be  
17 receiving the benefit of the plan distributions.

18 MS. LEVINE: Your Honor, I think we have a  
19 disagreement about what the evidence shows about that. But  
20 there's also a harm from having that choice taken away, and  
21 what we view of a violation of due process rights to be  
22 forced into a settlement that one does not agree to.

23 THE COURT: Well, the parties you're speaking on  
24 behalf of certainly had notice of the confirmation hearing  
25 and the right to hire a lawyer to make that very argument,

1       which is a lot easier to make than hiring a lawyer to  
2       compete against 48 states and the Debtors and the lawyers  
3       and their clients who make up the Ad Hoc Committee of  
4       Personal Injury Claimants.

5               If they're not prepared even to hire a lawyer to  
6       fight the plan, how do you assume that they're going to even  
7       undertake the litigation that you want to preserve for them?

8               MS. LEVINE: Your Honor, the premise that there  
9       was adequate notice, again, you know, we disagree with.  
10       That's part of our objection. And we know you disagree.  
11       And this is part of the reason why we think this needs  
12       appellate review.

13              And you know, there are parties who have filed  
14       claims that would be precluded. We think we've shown that.  
15       There are numerous cases listed in the preliminary  
16       injunction.

17              THE COURT: But they haven't objected to the plan.  
18       And you're not going to represent --

19              MS. LEVINE: Mr. Hartman has.

20              THE COURT: You're not going to represent them in  
21       the litigation, right?

22              MS. LEVINE: No, Your Honor. And of course, the  
23       United States Trustee is here not representing individuals,  
24       but representing the public interest in making sure that the  
25       bankruptcy system isn't abused. But we think, you know, you



1 can still look to that harm, the due process harm to people  
2 who are having claims eliminated, and to the public interest  
3 in having these significant important issues addressed on  
4 appeal as part of your harms balancing in addressing a stay  
5 pending appeal.

6 THE COURT: Okay.

7 MS. LEVINE: Your Honor, I don't know if you have  
8 further questions. You know, we've made our case in our  
9 briefs. Obviously, we have some disagreements, but we would  
10 stand on a request for a stay pending appeal. And I will,  
11 if you have no further questions, cede the floor to some of  
12 the other movants.

13 THE COURT: Okay.

14 MR. GOLD: Good morning, Your Honor. Matthew  
15 Gold, from Kleinberg Kaplan, representing the State of  
16 Washington. Can you hear me?

17 THE COURT: Yes.

18 MR. GOLD: May I proceed?

19 THE COURT: And see you too. Yes. You can go  
20 ahead.

21 MR. GOLD: Thank you, Your Honor. First, I just  
22 would like to touch on -- because I think it's an important  
23 point in context of the questions that Your Honor has raised  
24 -- the attempts that were made to try to resolve this matter  
25 prior to this hearing.

1 I think the key point, which Your Honor said in  
2 framing the question for us, was that it would be my wish  
3 that the schedule for the appeal is a reasonable one and  
4 does not run the risk of causing Norma's harm to creditors.  
5 I'm not going to quote every word you said, but the key  
6 point was, with a second potential look at the Appellate  
7 Court as to whether any further stay is necessary.

8 And I think that that is the point here where,  
9 with what we -- what I described earlier as our fallback  
10 position, that we are seeking to have a stay consistent with  
11 Rule 8025 that would at least take the process through a  
12 decision from the District Court, and then give a period of  
13 time for a higher court to decide whether to further extend  
14 the stay. The --

15 THE COURT: Can I represent you on that point, Mr.  
16 Gold?

17 MR. GOLD: Sure.

18 THE COURT: When talking to the U.S. Trustee's  
19 counsel, I made a distinction between a stay of the  
20 effective date, or the occurrence of the effective date  
21 under the order, which would be a specific condition to the  
22 effective date in the order and in the plan, and a stay of  
23 the order in its entirety. And it seemed to me that the  
24 latter might be warranted, but not the former. I mean --

25 MR. GOLD: Well --

1 THE COURT: -- the other way around. That the  
2 latter would not be warranted, but the former might be.

3 MR. GOLD: I think that a proper consideration of  
4 that question, Your Honor, requires a consideration of the  
5 effect of sentencing. And that is the -- and that is  
6 something that may not -- that is clearly contemplated under  
7 the confirmation order, although it may not be completely  
8 clear how it -- whether it arises under the plan or under a  
9 separate stipulation.

10 But the connection, Your Honor -- and I think the  
11 Debtor has been very clear about this -- is that they are  
12 going to press that once sentencing has occurred, they will  
13 be suffering immense harms if they are not permitted to then  
14 consummate the plan and to enter into the transactions under  
15 the plan. And so that, therefore, to enable there to be a  
16 meaningful stay of the consummation of the plan, as Your  
17 Honor has posited, there needs to be a delay of the  
18 sentencing as well.

19 If the Debtors can posit -- now, right now I'm  
20 positing what their argument is going to be, and I realize  
21 that that's a somewhat shaky limb to be on, but that's  
22 pretty much where I understand their position is going to  
23 be, so that to prevent the possibility of a shipwreck or  
24 major harms occurring if there is sentencing and not a --  
25 and they can't consummate the plan, we need to have a delay

1 in the sentencing.

2 If the sentencing is delayed and concurrent with  
3 that a stay of the effective date of the plan, we believe  
4 then Your Honor's analysis is correct, that that should be  
5 sufficient to maintain the status quo and prevent there  
6 being a substantial consummation that would be the predicate  
7 for an equitable mootness argument.

8 Now, even there, we're at a slight disadvantage  
9 because, as the U.S. Trustee has said, we don't know exactly  
10 what the Debtors would be doing and it would be a lot  
11 cleaner for us to accept this, if the Debtors would  
12 straightforwardly say, we agree with you; nothing else that  
13 is happening here would create a predicate for equitable  
14 mootness, along the lines of the assurances they gave to the  
15 parties in connection with the advance order, so that we  
16 would have a basis of knowing that there wasn't something  
17 going on that we're not aware of and that in our saying we  
18 don't think there's a problem, someone plays a gotcha game  
19 and says, yes, they weren't aware of this and that happened.

20 But based on our assessment, what we're aware of  
21 being contemplated, that's the one critical point that we  
22 have to add. There has to be a delay in sentencing and then  
23 a delay in the effective date of the plan, which would  
24 happen together because the effective date of the plan can't  
25 occur without sentencing in the first instance.

1           And so the reason we were unable to reach any kind  
2           of resolution with the Debtors in trying to resolve this  
3           short of having this lengthy hearing today was that they  
4           insisted that any resolution we reached with them had to  
5           include a date certain for the sentencing to occur.

6           And so that's why we've been unable to reach an  
7           assessment with them, because they kept including the  
8           sentencing, reserving their right to argue that the  
9           occurrence of the sentencing would create an equitable  
10          mootness problem, either by itself or because of what would  
11          be entailed afterwards. They didn't get to that level of  
12          specificity. But that's why we tie those two things  
13          together.

14          THE COURT: Okay. And I appreciate that I may be  
15          asking you to say things that are contrary to your later  
16          argument that sentencing wouldn't render the plan moot. And  
17          all I can say is that you wouldn't be held to those things  
18          in the future, and I'm sure the Debtors have thought of them  
19          to.

20          So I'm having a hard time seeing how the  
21          sentencing could create equitable mootness. I mean, it's  
22          part of a plea agreement. It's scheduled in front of a  
23          different judge. I guess I could enjoin --

24          MR. GOLD: Oh --

25          THE COURT: -- the Debtors from seeking it. But

1 the agreement has this provision that they're supposed to go  
2 get sentenced.

3 MR. GOLD: Well, Your Honor, as I understand it --  
4 and again, this will be something that the Debtors are  
5 saying this is argument that they're going to make.

6 THE COURT: Right.

7 MR. GOLD: And if they say before the Court now  
8 that they would not make this argument, that might be a lot  
9 cleaner. But as I understand it, their position is going to  
10 be that once sentencing occurs, they are no longer able to  
11 operate as the companies that are currently constituted.  
12 That because they will be sentenced, they will be unable to  
13 sell product, to receive Medicare, or contributions and  
14 other things. And that therefore, they will be threatened  
15 with an immediate shutdown, a corporate catastrophe, unless  
16 they are able to go ahead with the restructurings that are  
17 contemplated under the plan, and so then that's why those  
18 two will be tied together.

19 Now, I should say that, Your Honor, we would love  
20 nothing more than to engage with the Debtors and to say is  
21 there a way to allow this to go forward, to allow some  
22 corporate restructuring to take place, to allow some  
23 payments to go to the victims of Purdue and the Sacklers  
24 that are supposed to be receiving payments under the plan.

25 We're not trying to -- that's not our goal, to

1 prevent those types of assistance from happening. And if  
2 there is a way for the parties to on one hand permit some of  
3 these things to go forward, while on the other hand  
4 preserving the right of appeal, we are very -- we have  
5 always been open to having that discussion of trying to make  
6 propositions along those lines to the parties. Or perhaps  
7 something along the lines of the emergency relief fund that  
8 was proposed during the case, but that did not occur.  
9 Something like that that could perhaps take place to allow  
10 parties to get relief.

11 What we perceive is that the parties who have  
12 refused to engage with us on this point are doing so because  
13 they want to be able to hold up the possibility of relief as  
14 their ticket to getting an equitable mootness that would  
15 preclude further appeals.

16 So if there is a way of managing to separate these  
17 things through stipulation, or an order, or something that  
18 allows some of these things to occur -- and I think Your  
19 Honor is right that perhaps they are not at all necessarily  
20 as abstract principles linked, but we believe that -- our  
21 understanding is that the way this plan has been drafted and  
22 that this plan has been put together -- and this is a plan  
23 that has been drafted and put together with a clear strategy  
24 of preserving it through equitable mootness -- that the  
25 effort has been made to tie these things together so that

1       they could not be disentangled, and so that starting down  
2       this road would necessarily create the predicates for  
3       equitable mootness. And that starts with the sentencing and  
4       then pulls in the restructuring and then the other matters  
5       that occur there.

6               I will just note then with respect to the timing,  
7       the plea agreement took place, I'm going to say, in October  
8       or so of 2020, and was held in abeyance for a period of time  
9       to allow further proceedings before this Court, confirmation  
10      and other such things. The Debtors then, for reasons that  
11      are at least opaque to us, put in a further delay for them  
12      to do certain preparations prior to the sentencing  
13      occurring.

14             So it's pretty clear to us that the sentencing,  
15      which we are not asking to be undone but can be held in  
16      abeyance while the issues under the plan receive proper  
17      appellate review, and so holding those matters off, the  
18      Debtor has managed to stay in this presentencing period for  
19      over a year now and contemplated further staying.

20             So we believe that the most effective and simplest  
21      way to preserve the status quo is to have, as Your Honor  
22      said, a stay that includes the effective date plus the  
23      sentencing to avoid the shipwreck scenario. Or in the  
24      alternative, we're perfectly -- we are desirous of trying to  
25      come up with a better way to allow some benefits to go



1 through, if it will not -- if the parties can agree that  
2 doing that will not equitably moot an appeal.

3 But so far, we have not received serious  
4 engagements on that. And apparently, the parties prefer to  
5 try to use the very real need of these victims to receive  
6 money as a kind of hostage situation where they can't get  
7 their money unless our appeals are irrevocably denied  
8 through (indiscernible) risk.

9 THE COURT: Okay.

10 MR. GOLD: I will not -- I will move on, then,  
11 Your Honor. I will not touch on the merits particularly,  
12 because as I think Your Honor said, we agree that the  
13 standard is sufficiently flexible, that we've made enough of  
14 a showing with the merits of the appeals that we wish to put  
15 forward, to satisfy the test in the Second Circuit. And we  
16 concede that we have to meet several factors of the prongs,  
17 and it's not simply enough to have succeeded on one of them.  
18 But we believe that we've made a sufficient showing on those  
19 to move on to the other prongs as well.

20 I would just note that the irreparable harm that  
21 we will suffer here is the deprivation of the rights of the  
22 moving states to bring their independent actions under state  
23 law against the Sacklers. And that the potential loss of  
24 those claims is certainly real enough to satisfy any  
25 requirements that it not simply be mere equitable mootness,

1 but equitable mootness plus a consequence, that that's the  
2 consequence here.

3 And then there are other cases also raised in the  
4 briefs that we believe are also compelling, that says that  
5 any time a state is prevented from enforcing its laws, it  
6 has also suffered an irreparable harm. Those two together,  
7 we believe, certainly satisfy the requirement that there be  
8 a form of irreparable harm shown here.

9 I will then turn, if Your Honor doesn't have  
10 questions, to the question of the balancing of the harms,  
11 which is the next factor here.

12 It feels to us that an awful lot of the arguments  
13 that the stay opponents have put forward basically can be  
14 described from the movie, "Blazing Saddles", where the  
15 sheriff who finds himself in a difficult spot -- played by  
16 Cleavon Little -- points a gun at his own head and manages  
17 to convince the parties that the threat to himself that he  
18 is posing are sufficient to allow him to be extricated from  
19 that position. And the reason I mention that here is  
20 because the harms that the stay opponents are positing here  
21 are ones that they are themselves creating to a large  
22 extent.

23 So first, as I've touched on already, is the  
24 question of the sentencing. I believe their argument is  
25 going to be that if sentencing occurs, but they can't

1 proceed, they will suffer harm. Well, the simple answer is  
2 for them to seek to defer sentencing until the appeals have  
3 run their course.

4 Second, we have these arguments that the Sacklers  
5 have the right to terminate the agreement if a stay is  
6 entered. And I find this an outrageous suggestion, Your  
7 Honor. I will note that during the hearing that took place  
8 on October 14th on certification of a direct appeal, there  
9 was another issue regarding a Sackler termination right.

10 Mr. Huebner stated emphatically to this Court that  
11 of course he had a waiver of that Sackler termination right,  
12 and that he would not be coming into the court without  
13 having a waiver of that termination right in his pocket.  
14 And the reason for that was self-evident. How could one  
15 think that Purdue would put in jeopardy the Sackler  
16 settlement agreement, the centerpiece of the plan? But that  
17 is what Purdue is arguing right here. That they granted the  
18 Sackler a walk right.

19 I will note that this walk right was slipped into  
20 the agreement at literally the last moment, while the  
21 confirmation trial was proceeding, after the evidentiary  
22 portion of the confirmation trial had closed, after all the  
23 testimony about how wonderful a settlement this was had  
24 already been placed on the record.

25 And I will also note that Purdue did not consider

1       this walk right to be significant enough to advise the Court  
2       and other parties, oh, by the way, we've posted an amended  
3       Sackler settlement agreement, and it happens to contain a  
4       provision that will allow the Sacklers to terminate this if  
5       there's a stay pending appeal, which a possibility of  
6       request for a stay was clearly contemplated by everyone.

7               So, now, how could this be? How is it possible  
8       that all the tremendous lawyers representing the stay  
9       opponents voluntarily put in jeopardy the centerpiece of the  
10      plan? Not because they were confident that there would be  
11      no appeal, nor that there would not be a motion for a stay  
12      pending appeal. It has to be that they could not seriously  
13      expect that the Sacklers would spurn all the benefits that  
14      they get under this plan and actually exercise this right,  
15      and rather, because they intended to use this provision as a  
16      means to bludgeon the courts into denying a stay. And we  
17      submit that that should not be permitted here.

18             Second argument that they put forward relates to  
19      the attorneys' fees that they themselves are incurring and  
20      will incur during the period of the stay. We believe this  
21      is also an outrageous point. If they seriously believed  
22      that the size of the fees that they generate were causing  
23      harms to victims of Purdue and the Sacklers, they ought to  
24      be finding ways to limit their fees.

25             To start with, it was not necessary for seven

1        oppositions to the stay motions filed by seven different  
2        parties to be filed. They could've coordinated a single  
3        filing. I know this could be done because the states  
4        routinely coordinate to present fewer filings to Your Honor.

5                More to the point, steps could've been taken  
6        during the case to curtail the amount of professional fees  
7        during the case, or to curtail the amount of fees that will  
8        be charged post-confirmation. But no. The only way in  
9        which the stay opponents suggest that fees ought to be  
10       controlled is by denying this stay to the Appellants. And  
11       we submit that that is too transparent to take seriously.

12               Then we reach what I believe is the far more  
13       serious concern, which is the delay in relief going to the  
14       victims of Purdue and the Sacklers. I just note that this  
15       is not a new problem. This is a problem that's been  
16       weighing on everyone through the over two years that this  
17       case has been pending. This did not suddenly become a  
18       problem. The victims of Purdue and the Sacklers needed help  
19       two years ago when the cases were filed. But that undoubted  
20       need was subordinated to the legal process of this case.

21               The plan opponents could have during the case  
22       established the emergency relief fund to provide faster  
23       relief to the victims. But they didn't. Now, we are in a  
24       post-confirmation pre-effective date period. There was the  
25       famous 82-day period before the plan could go effective,

1 which was put in there, as we understand it, for the  
2 convenience of the Debtors to allow them a deliberate period  
3 of time to undertake certain corporate transactions.

4 If the harm to the parties of not getting their  
5 money sooner was a serious possibility, that period of time  
6 could've been shortened as well, but it wasn't. The only  
7 time when this delay apparently becomes intolerable is when  
8 it's used as a means to curtail the stay that we're  
9 requesting and the preservation of our appellate rights.

10 The appealing states -- and especially in this  
11 context, where we are asking for a stay -- goes through the  
12 time of the anticipated ruling of the District Court, plus a  
13 meaningful period of time to take the issue to a higher  
14 court. The incremental harm to those parties that will  
15 occur during this relatively imitated period is far less of  
16 a kind of all the terrible delays that they've had to suffer  
17 through the case and does not provide an independent basis  
18 for denying a limited stay through this time period.

19 THE COURT: Well, I'm having a hard time following  
20 that point, Mr. Gold. I mean, it's still harm, and I think  
21 that the real issue is how great a harm is it in comparison  
22 --

23 MR. GOLD: I agree, Your Honor.

24 THE COURT: -- to the countervailing harm of  
25 giving the Appellants the opportunity to try to vindicate

1       their rights on appeal.

2               MR. GOLD: I completely agree, Your Honor. And  
3       it's a complicated issue because this is apples and oranges,  
4       if I may say. The harms that we have here are different in  
5       type, difficult to quantify, and so the Court has to engage  
6       in the kind of balancing. I'm just suggesting that the harm  
7       here will not -- we're not disputing that it really occurs,  
8       but this harm is one that the parties have lived with  
9       throughout the case because there were important legal  
10      principles or other things that were taking place. And  
11      we're suggesting that it does not outweigh here the  
12      preservation of our appellate rights.

13             THE COURT: Well, again, that may be the case  
14      through a relatively short period after what would normally  
15      be the effective date, because distributions in some measure  
16      would be made into the trust, but not out of the trust, for  
17      a period after the effective date. But the longer you go,  
18      the more the delay really counts, because there comes a  
19      point when (indiscernible) claims start being liquidated and  
20      the NOAT procedures are established, and at that point, the  
21      money really does start going out.

22             MR. GOLD: Well, I --

23             THE COURT: Have your clients and the Debtors  
24      talked about when that point is likely to be?

25             MR. GOLD: Well, as I said, Your Honor, what we

1 have attempted to do with the Debtors is to find a way to --  
2 and again, using the model that was engaged with the trust  
3 advance motion to have the parties agree to allow various  
4 steps to take place, including the ones that Your Honor has  
5 listed -- and we have had, I have to say, little engagement  
6 or appetite for engagement from the Debtors or the other  
7 parties in terms of being able to parse.

8 I do agree that part of the benefit of having the  
9 stay be limited to the period of time that we've discussed  
10 in terms of getting us to the next level is that we can  
11 analyze more concretely what steps are going to occur,  
12 rather than looking at and allowing the next courts to be  
13 able to focus on what issues would be arising then, and what  
14 could be concretely happening then, and weighing that  
15 against the harms that might occur.

16 It is certainly for the purposes of the District  
17 Court's ruling, that by all evidence, Judge McMahon is  
18 keenly aware of the importance of having a decision done  
19 quickly. And frankly, again, the other benefit is that  
20 because she was aware of this, she was able to insist on a  
21 briefing schedule to enable that all to work.

22 And if we are going to the next court, should that  
23 be necessary, then, again, the Second Circuit could be in a  
24 position to condition a stay upon an expedited briefing  
25 schedule before the Second Circuit, which no lower court



1 could meaningfully be in a position to impose on the Second  
2 Circuit, which they could do themselves.

3 So we posit that the harm for this period of time  
4 is not sufficient to outweigh the importance of the  
5 appellate rights that are being preserved, and that the  
6 issue may have to be revisited by another court with its own  
7 timetable in place and depending on where the matters stand  
8 at that point.

9 And as I said, we are more than willing to try to  
10 work with these parties to find a way to allow transactions  
11 to occur, to allow even payments to go to needy parties, if  
12 there can be a way to structure that to not affect the  
13 appellate rights.

14 So now I turn Your Honor to the public interest  
15 component of the process. We submit that it is manifestly  
16 in the public interest that this plan be fully tested on  
17 appeal, not -- the Debtors seem to sometimes have the  
18 position that the only appeal that is meaningful here is  
19 appeal to the District Court. This case could have been in  
20 front of the Second Circuit already, had the Debtors agreed  
21 to certification of a direct appeal. But they chose not to.

22 THE COURT: Well, the Circuit would have had to  
23 have taken it too.

24 MR. GOLD: That's true, Your Honor. I'm just  
25 saying that the Debtor -- that we didn't reach that point.

1 And part of the reason why we didn't reach that point was  
2 that the Debtors at that hearing insisted that it was  
3 important that we go to the full process of first review  
4 from the Bankruptcy Court, and then review from the Court of  
5 Appeals.

6 And so we want to -- now that we are on that path,  
7 we want to make sure that all levels of appeal are preserved  
8 and not booted out through equitable mootness. And we  
9 submit that that is manifestly in the public interest, and  
10 that it is against the public interest that parties be  
11 permitted to design plans to create equitable mootness  
12 factors in them as a means of avoiding review. I mean, Your  
13 Honor, I can state that I received emails today of CLA  
14 programs that are already being designed and marketed to  
15 teach bankruptcy lawyers how to design plans that provide  
16 non-consensual releases and that can be protected by  
17 equitable mootness. The community and the country as a  
18 whole is watching this, and it is critical --

19 THE COURT: Equitable mootness --

20 MR. GOLD: -- that this is --

21 THE COURT: -- has been an issue in the -- at the  
22 circuit level for decades.

23 MAN: I understand, Your Honor.

24 THE COURT: And somewhat inexplicably to me the  
25 Supreme Court turned down cert this last term on two cases

1       that could've resolved that issue. That has nothing to do  
2       with this plan at all. And it would seem to me that as we  
3       just discussed, the public interest in avoiding harm,  
4       tangible harm, to the victims increases with time. And  
5       you're just ignoring that when you talk about the public  
6       interest.

7               And again, it's well-recognized that one issue,  
8       one element of the public interest, is the finality of  
9       reorganizations. So I think it's much more complicated than  
10      you're saying here, but I also think that what you're  
11      arguing for now is well beyond what you had been arguing  
12      for, which is some form of a stay through a ruling by the  
13      District Court. Because now you're talking about staying  
14      matters through a determination by the Supreme Court, which  
15      could be in 2024. And --

16             MR. GOLD: Allow me to clarify, Your Honor,  
17      because I understand why you might have thought that, but  
18      that's not what I meant to say. The -- I think we have been  
19      candid that we will -- that we intend to seek stays that go  
20      on to the higher levels. What I am now suggesting to Your  
21      Honor is that the stay that we would be obtaining from Your  
22      Honor would preserve our ability to seek further stays from  
23      higher courts --

24             THE COURT: Okay. Fine.

25             MR. GOLD: -- and that --

1           THE COURT: Then I -- that's fine. So we're  
2 really -- I think -- look, here, the public interest point  
3 very much dovetails with the balance of harms, as far as I  
4 can see. The parties here have agreed on the form of the  
5 distribution of the money under this plan and have touted it  
6 as something that is a single achievement. When I say the  
7 parties here, I mean both the appellees and the appellants.

8           So what we're talking about here is a dispute  
9 between the appellants and the appellees on whether more  
10 money can be obtained through this process because that's  
11 what we're talking about. We're talking about more money,  
12 and whether that warrants additional delay. And to me that  
13 just goes back to the balancing of the harms.

14          MR. GOLD: Well, Your Honor, the -- I would just  
15 clarify a few points of what you have stated. I do agree  
16 that the appealing states participated in the design of many  
17 features of the plan, and that we do believe that a lot of  
18 those features of the plan are salutary and are ones that we  
19 agreed to together. But that was always -- those were  
20 always being negotiated based on the predicate that other  
21 issues, principally the releases, could also be  
22 satisfactorily resolved, and unfortunately, they were not.

23          The -- I will also note that the issues that arise  
24 vis-a-vis the Sacklers, are not solely issues relating to  
25 the amount of money that can be paid. Although that is

1 certainly an important component of it, but there are other  
2 issues regarding, for instance, the Sackler agreement to  
3 have their name taken off of various institutions, about the  
4 scope of the -- of when documents can be available in the  
5 document depository -- or repository and other things that  
6 are not, that take this case beyond a mere matter of money.

7 And I again state that the appealing states are  
8 highly anxious to try to find ways to reduce the burdens on  
9 the ones that Your Honor has identified rather than to hold  
10 them hostage as a means of avoiding appellate  
11 (indiscernible) important question. Because we -- because  
12 all of these are -- all the things that Your Honor stated  
13 are matters of public concern. But where you have a --  
14 where you have what as Your Honor has identified as non-  
15 frivolous, serious questions regarding the permissible scope  
16 of a -- of releases granted pursuant to a confirmation  
17 order, having those issues clarified on appeal we submit is  
18 a compelling public interest, notwithstanding the other  
19 matters that Your Honor has identified.

20 THE COURT: Well, those other matters are, I  
21 think, pretty eloquently laid out in the declarations of Ms.  
22 Juaire. I'm hoping I'm pronouncing that right, J-U-A-I-R-E,  
23 and Ms. Trainor, T-R-A-I-N-O-R.

24 MR. GOLD: Your Honor, I will --

25 THE COURT: I guess I've heard you and I

1 appreciate what you've said, Mr. Gold, about the State's  
2 willingness to work with the appellees on intermediate steps  
3 that minimize that countervailing harm that they detail.

4 I guess the point that I need to press is, are the  
5 three states prepared to accept some risk of equitable  
6 mootness as part of those steps. The U.S. Trustee  
7 apparently takes the position that it's not, which seems  
8 rather bizarre to me and contrary to the case law. But I  
9 don't know whether what you're offering here is just couched  
10 by saying of course we can't take a risk of equitable  
11 mootness, or is it willing to take some risk?

12 MR. GOLD: Well, Your Honor, our -- we -- first,  
13 we are agreeing to accept some -- our issue is not -- our  
14 view is not identical to the U.S. Trustee, which as you've  
15 obviously seen from the briefing that has been submitted.  
16 We have not taken a separate appeal from the advance order.  
17 We're not pursuing that. We are accepting that.

18 While there is in theory some risk of equitable  
19 mootness from that, we don't consider it to be a significant  
20 enough one that we are pursuing that. And so we are  
21 exercising some judgment in terms of what risks of equitable  
22 mootness we are willing to take and which not.

23 We also recognize that the framework that was  
24 adopted with respect to the trust advance order had a -- and  
25 in fact, also the structure that Judge McMahon adopted with

1     respect to her ruling involved having the various parties to  
2     the appeal stipulate that they were not going to use these  
3     matters as the basis for an argument for equitable mootness.  
4     Now, we recognize that that is not bulletproof, that it's --

5             THE COURT:  No, I actually think it is.

6             MR. GOLD:  And the higher court could --

7             THE COURT:  I --

8             MR. GOLD:  The higher court could make its own  
9     determination --

10            THE COURT:  Yeah, I --

11            MR. GOLD:  -- but again, we --

12            THE COURT:  -- think it is pretty bulletproof.  I  
13     mean, again, my quote from Judge Kaplan was focusing on  
14     constitutional mootness, which is really a different issue  
15     --

16            MR. GOLD:  Yes.

17            THE COURT:  -- as opposed to equitable mootness.  
18     It would seem to me very hard for anyone to rule that it was  
19     equitable to hold something as causing mootness when the  
20     very party that would benefit from that had stipulated that  
21     it wouldn't.  That would seem --

22            MR. GOLD:  Right.

23            THE COURT:  -- at the height of not being  
24     equitable.

25            MR. GOLD:  Your Honor, I have said very much the

1 same in my analysis of that question, although it's more  
2 meaningful coming from Your Honor than it is from a mere  
3 lawyer. The point I'm making is that if we -- so, if the  
4 parties -- what we have been proposing was that the parties  
5 stipulate that they would not seek to use the steps that we  
6 are suggesting that we would be willing to negotiate with  
7 them as the basis for an equitable mootness argument.

8 And while that is not nearly as bullet proof in  
9 the context of payments going to parties as it is in the  
10 context of establishing trusts or other such matters, we are  
11 certainly willing to seriously consider taking the risk that  
12 some other party might raise those things, notwithstanding  
13 the party's stipulation. But we think that having the  
14 parties stipulate to that would go a long way to allow that  
15 to occur.

16 That's far from the situation where if we say  
17 we're willing to allow certain things to go forward knowing  
18 that the other parties, like say with the sentencing where  
19 the Debtors have said let there be no mistake. When  
20 sentencing occurs, we are going to insist that that has  
21 equitable mootness concerns. That's a very different  
22 analysis for us than something where the Debtors have  
23 stipulated that they are not going to raise equitable  
24 mootness.

25 So if the -- all I'm suggesting is that if these



1 parties -- if their principal concern is in getting aid to  
2 the victims, then they should be willing to work with us to  
3 waive equitable mootness arguments and allow the payments to  
4 go forward. If on the other hand --

5 THE COURT: No, that's fine. I understand your  
6 point. Okay?

7 MR. GOLD: Okay, Your Honor. The -- Mr. Goldman  
8 is going to be addressing the issues regarding the  
9 declarations that have been submitted, so I will not further  
10 extend this hearing by stating them myself. And the --  
11 unless Your Honor has any questions, I don't think --

12 THE COURT: Well --

13 MR. GOLD: -- there's anything --

14 THE COURT: -- are one of you going to address the  
15 bond issue?

16 MR. GOLD: I can do that, Your Honor. The -- we  
17 submit that this case is governed by the plain language of  
18 the rule that says a bond or other security is not required  
19 when an appeal is taken by the United States, its officer,  
20 its agency, or by direction of any department of the federal  
21 government.

22 And we have here the -- that is our circumstance.  
23 We are dealing with appeals that have been simultaneously or  
24 substantially simultaneously filed by the U.S. Trustee,  
25 which fits the category of the United States, its officer

1 agency, and by the states. We are raising substantially  
2 similar issues, or I would say that the U.S. Trustee has  
3 issued a broad panoply of issues that include the issues  
4 that we are raising on our appeal, and that based on that,  
5 no bond can be required on this consolidated appeal.

6 Certainly if the -- if no bond is applied or a  
7 stay is granted for the U.S. Trustee, there should be no  
8 bond for -- because the same stay will be in effect, and  
9 it's the same stay that will be protecting the U.S. as well  
10 as the states.

11 We also -- I don't have much to add to our  
12 argument that there are other cases that recognize an  
13 analogy between sovereign states and the U.S., although the  
14 rule does not specifically mention them, and that therefore  
15 finds it inappropriate to impose bonds on the states by  
16 analogy. But that's -- though we finally -- we would simply  
17 submit that the cases that the stay opponents founded were  
18 -- had nothing to do with our circumstances, had to do with  
19 bonds being required of non-government actors, and provide  
20 no illumination on what the Court should be doing.

21 THE COURT: So what do you make of the committee  
22 notes to Rule 8007(c) and (d), the 2014 committee notes,  
23 which state that (c) and (d) retain the provisions of the  
24 former rule to condition the granting of relief on the  
25 posting of a bond by the Appellant except when that party is

1 a federal government entity?

2 MR. GOLD: Well, Your Honor, I will make two  
3 points here. I think that that -- first, I would say that  
4 that comment is not directed to the circumstance where there  
5 are simultaneous appeals by multiple parties, and that the  
6 -- I would secondly point out that there is substantial case  
7 law saying that what the Court should be looking at is the  
8 language of the rule itself rather than the committee notes  
9 that provide distinctions that were not included in the  
10 language of the rule itself, and that because the U.S.  
11 Trustee is entitled to an unbonded appeal here, it --  
12 there's -- there should be no bond. There'll be no point in  
13 having an additional bond when it's the same appeal.

14 THE COURT: So the general rationale for exempting  
15 the United States from the bonding requirement is that most  
16 judgments, and this is consistent with 28 U.S.C. 24  
17 something -- the U.S. Trustee cites it -- is that the United  
18 States is good for it because it's a judgment against the  
19 United States, and the United States is always good for it.

20 Your interpretation of this rule would mean that  
21 if there was a judgment against the United States and  
22 against third parties, the third parties would have the  
23 benefit of the United States being good for its portion of  
24 it, and that they would have -- they could just have a free  
25 ride on that, and the Plaintiff should take the risk?

1 MR. GOLD: Well, Your Honor, I'm not sure what the  
2 judgment would --

3 THE COURT: No, I'm just talking about --

4 MR. GOLD: -- would be --

5 THE COURT: -- your interpretation of the rule,  
6 which would include, I think, that scenario, which doesn't  
7 seem to me to be a -- an interpretation that Congress would  
8 want.

9 MR. GOLD: Well, Your Honor, when -- since we are  
10 dealing here with states, and I don't believe that there's  
11 any serious issue regarding collectability --

12 THE COURT: Actually, Judge Posner thought there  
13 was in Lightfoot v. Walker, 797 F.2d 505 and 506 through 07  
14 (7th Cir. 1986). So, anyway. But I guess there is the  
15 issue as to what we've just been talking about is the  
16 balance of the harms, and that balance may become  
17 significantly greater as time goes on. Before then, the  
18 Debtors have attempted to quantify that in the DelConte  
19 declaration.

20 But I'm not sure -- well, it's really a question  
21 for the Debtors as to the delay by three months, what does  
22 that mean? But I think what it means is it's more on the  
23 back end than the front end where there's significant loss.  
24 But I don't think there's any doubt that the cost for a  
25 lengthy delay of, you know, several months to a year or two

1 really is dramatic here in terms of dollars and cents. So  
2 it would seem to me that, as time goes by, the need for a  
3 bond grows dramatically to offset the vindication or not of  
4 the Appellant's right on appeal.

5 MR. GOLD: Well, Your Honor, I guess that gets  
6 back to the point that we discussed before why it may make  
7 more sense to have Your Honor stay -- take us through the  
8 relative short term when the costs are relatively contained  
9 and lower and allow a later court that -- a higher court  
10 that can have a better sense of how long it will be taking  
11 on the appeal resolve that issue.

12 THE COURT: Okay.

13 MR. GOLD: Thank you, Your Honor. I have nothing  
14 further to add at this point. I may have rebuttal points  
15 after the Debtors or another party's presentation.

16 THE COURT: Okay.

17 MR. GOLDMAN: Your Honor, Irve Goldman, Pullman  
18 and Comley for the State of Connecticut. May I be up next?

19 THE COURT: Yes, that's fine.

20 MR. GOLDMAN: Thank you, Your Honor. I first  
21 wanted to just for Connecticut adopt the arguments that we  
22 made by Mr. Gold for Washington and affirm that, you know,  
23 the principal form of relief that we are seeking at this  
24 point is our fallback, or what was previously described as a  
25 fallback position.

1           We are looking for a stay until 14 days after  
2           Judge McMahon issues her ruling, which I would note may very  
3           well come after December 8th, which is what the Debtors  
4           described as the earliest point when the effective date can  
5           occur, which is seven days after the 75th day after the date  
6           of the confirmation order.

7           And it seems unlikely that it will come after that  
8           date because we have oral argument, as Your Honor knows, on  
9           November 30th, and Judge McMahon has advised us that she  
10          starts a two-defendant criminal trial on December 7th. So  
11          that would give her less than a week to get out what I would  
12          anticipate is a very complex decision. So we would project  
13          that it would likely come after that trial has concluded.  
14          But I just want to circle --

15                THE COURT: What's on trial? It's oral argument.  
16          Oh, the criminal trial.

17                MR. GOLDMAN: Yes, correct, Your Honor.

18                THE COURT: Well --

19                MR. GOLDMAN: That's what we were advised.

20                THE COURT: Okay.

21                MR. GOLDMAN: And if I could just circle back for  
22          a moment to this apprehension that we have of equitable  
23          mootness based on the Debtor's indication that they'll argue  
24          the criminal sentencing will, you know, be the fulcrum for  
25          that in a stipulation that was filed with the District Court

1 on October 20th that dealt with their commitment not to  
2 argue that anything pursuant to the advance order or in the  
3 preparatory stages leading up to the effective date, they  
4 would not argue with the basis for equitable mootness.

5 It carved out in paragraph 2 the following  
6 provision. The stipulation does not address the criminal  
7 sentencing of Perdue or the effect or consequences of such  
8 sentencing on these or other appeals. So currently, they  
9 have signaled the intention to argue that, and I think the  
10 stay of the confirmation order would be the most effective  
11 way to prevent that from happening.

12 The reason I say that is because the plea  
13 agreement itself provides that the parties, meaning Perdue  
14 and USDOJ will agree to request that the sentencing hearing  
15 take place no earlier than 75 days following the date of  
16 confirmation. This contemplates a joint request. And so  
17 that if there is a stay of the confirmation order, there  
18 would be no reason for any party of the Debtors or the  
19 United States to request a scheduling of the sentencing  
20 hearing for the very reason that the Debtors have argued  
21 that if they are sentenced and thereby become a convicted  
22 felon, that would put their continued operation at jeopardy.

23 So I think the most effective way to deal with  
24 that would be to stay the order. And I think Mr. Gold also  
25 touched on this as part of the calculus of determining

1 whether there was irreparable harm. We contend the Court  
2 should not only consider the risk of equitable mootness, but  
3 the consequences that would ensue to the states if their  
4 causes of action are eliminated, which is unquestionably  
5 their property, not property of the estate. And in an  
6 equitable mootness scenario, that property will have been  
7 taken away without appellate review of whether the taking  
8 was proper.

9 I know Your Honor has concluded that the states  
10 will likely do better or will do better financially under  
11 the plan than they would if they were permitted to go  
12 against the Sacklers and other third parties. But that does  
13 not account for the character of these release police power  
14 claims as a deterrent to future wrongdoers and simply  
15 assumes incorrectly that their value is purely financial.

16 Now, if I can turn to the balance of the harms,  
17 and specifically the declarations that have been submitted  
18 by the various parties. As Your Honor is aware, we've made  
19 some discreet, detailed objections to the admissibility of  
20 some portion of the declarations, and which of course must  
21 follow the Rules of Evidence. Everyone's trying to  
22 establish a record here, and so applying the Rules of  
23 Evidence is important in this context.

24 And under the Rules, the testimony offered by a  
25 declaration has to be based on personal knowledge, not



1 hearsay. The sufficiency of personal knowledge has to be  
2 established by what is in the declaration. It can't contain  
3 conclusory statements or arguments. It has to set forth  
4 specific facts. And to the extent a lay opinion is offered,  
5 it has to be based on the declarant's own person knowledge  
6 and must not be based on specialized knowledge. And all the  
7 declarations, to one degree or another, fails to satisfy one  
8 or more of those requirements.

9 Mr. DelConte's declaration, for example, talks  
10 about operational risk to the Debtors. He first says that  
11 the State could result in delay in bringing about public  
12 initiatives to market. He says "could". He doesn't say  
13 what initiatives are being planned to go to market during  
14 the period of any stay, no facts establishing what his  
15 personal knowledge of what the initiatives are. He's  
16 obviously not a member of Perdue's public initiative group.

17 Granted, he is a financial advisor for the  
18 company, but I think here he is being used as a type of all-  
19 purpose as an expert for all things Perdue. And I don't  
20 think that he can be used to just say in a conclusory  
21 fashion some unspecified initiatives will be delayed during  
22 a period of the stay we're requesting. In part four of the  
23 declaration --

24 THE COURT: Well, they would certainly be delayed  
25 if the Debtors weren't able to engage in any business, right

1 because of the criminal plea?

2 MR. GOLDMAN: Well, if they pled -- correct. If  
3 they were a convicted felon, according to the Debtors, that  
4 would restrict -- eventually, maybe not automatically as I'm  
5 told, but eventually it would lead to the termination of  
6 their licenses and the ability to do business unless the  
7 properties could be transferred to NewCo at that point.

8 But as I had indicated, Your Honor, if Your Honor  
9 stays the order for the period we're requesting, it is  
10 highly unlikely that that criminal sentencing will take  
11 place during the period of that stay. And again, those  
12 unspecified initiatives that he says aren't -- will be  
13 delayed --

14 THE COURT: That's not really an evidentiary  
15 objection. You're just objecting to the fact that it  
16 doesn't say very much, and I get that. I understand that,  
17 but that's not an evidentiary objection.

18 MR. GOLDMAN: Then I'll move on, Your Honor, to  
19 what I think is an evidentiary objection. It's part 4 of  
20 the declaration, which is a recitation of what Mr. DelConte  
21 believes could be the operational risks if the stay is  
22 granted. Based on how upset the employees, vendors, and  
23 customers would be if there was a delay occasioned by the  
24 stay, clearly that's based on what he was told the Debtors  
25 told their customers, vendors, and employees.

1           And certainly, Mr. DelConte is not competent to  
2     testify as to how other parties, namely the customers,  
3     vendors, and employees, would react to a stay of limited  
4     duration, particularly when they have certainly hung in  
5     there and not walked away during the two-plus years that  
6     this case is undergoing Chapter 11. There's certainly no  
7     basis for believing that now suddenly that the -- whether a  
8     confirmation order has been appealed, that they wouldn't  
9     tolerate a few additional months of delay.

10           In fact, if anything, there was greater  
11     uncertainty in terms of what would happen with the --

12           THE COURT: Mr. Goldman, can I interrupt you? Are  
13     you testifying now --

14           MR. GOLDMAN: Certainly.

15           THE COURT: -- or are you making argument based on  
16     your assessment of how people think?

17           MR. GOLDMAN: Well, that is argument, Your Honor.

18           THE COURT: And that's how I would treat this.

19           MR. GOLDMAN: And --

20           THE COURT: This is his prediction based on his  
21     knowledge of the Debtor's business of what would happen.  
22     Not what will happen, but his prediction.

23           MR. GOLDMAN: Well, again, I think that that -- he  
24     wasn't offered as an expert, and I think he is testifying  
25     based on what he was told. And --

1 THE COURT: Well, that's what you're saying too.  
2 I'm just saying it's a prediction.

3 MR. GOLDMAN: Well, Your Honor, I'm not offering  
4 my argument as testimony yet, but he is.

5 THE COURT: Well, only for this --

6 MR. GOLDMAN: So --

7 THE COURT: -- I will treat only for that purpose  
8 is what he reasonably believes based on his knowledge of the  
9 company.

10 MR. GOLDMAN: Let me move on to Mr. Gard. And in  
11 paragraph 3, again, this really goes over what Mr. DelConte  
12 testified to, and that it's his belief that a delay, though  
13 materially, would give us Perdue's residual value and  
14 talking about the uncertainty of the bankruptcy process.  
15 Again, he -- this is lay opinion. It's not supported by  
16 facts establishing it's within his personal knowledge.

17 And this is in the province of experts to say what  
18 Perdue's residual value might be given the uncertainty and  
19 delay of -- and stay of the limited duration that we're  
20 requesting. And in paragraphs 14 and 16, he offers the  
21 prediction that as a result of the delayed distributions  
22 during the stay, it's quite possible that additional  
23 Americans will die, and then suggest that a stay will allow  
24 Americans to needlessly die, who would not have died but for  
25 a stay.

1           Now, this is obvious argument as well and not  
2 fact. I mean, evidence of widespread death as a result of  
3 stay of limited duration has got to be based --

4           THE COURT: Well, again --

5           MR. GOLDMAN: -- on more than --

6           THE COURT: -- it depends on what the length of  
7 the stay is. I just -- look, on your first point, the only  
8 example that he gives for the effect of a stay is if the  
9 plea goes forward without the plan being implemented. And  
10 to me that is a meaningful effect. To the extent he's  
11 talking about other effects on keeping senior employees, I  
12 agree with you.

13           I don't think he's really -- unlike Mr. DelConte,  
14 he's not really in a position, you know, other than anyone  
15 else or different than anyone else to talk about that point.  
16 But on the plea point, I understand his point.

17           And then, look, the testimony is based upon I  
18 think an undisputed fact that roughly 200 opioid-related  
19 overdose deaths occur, and that those deaths have been  
20 increasing at remarkable percentage rates over the last  
21 couple of years. And I think he and -- he is perfectly  
22 positioned to discuss that point given his job, which he's  
23 required to assess how best to deal with that issue for his  
24 state.

25           And I take, again, his prediction that at some

1 point -- and he doesn't really say when that point is, but  
2 at some point, a stay can lead to additional deaths if it  
3 results in a meaningful delay of funds. I don't see how  
4 anyone could dispute that.

5 MR. GOLDMAN: Your Honor, I do -- the point I'm  
6 trying to make here is that Mr. Gar and the other  
7 declarations are trying to draw a causal connection here  
8 then because distributions will be delayed, that will result  
9 in grievous harm. And there just -- that really is in the  
10 province of experts.

11 What will happen, they haven't said the amount of  
12 funds that are going to be delayed. What would otherwise be  
13 disbursed and used by the various constituents --

14 THE COURT: The record is --

15 MR. GOLDMAN: -- during period of --

16 THE COURT: The record is crystal clear that every  
17 dollar counts because there is no surplus. If that weren't  
18 the case, then your client's lawsuits are meaningless. This  
19 is a really strange exercise, Mr. Goldman, I have to say.

20 MR. GOLDMAN: Well, I make --

21 THE COURT: And I guess --

22 MR. GOLDMAN: -- they're --

23 THE COURT: -- what you're saying is your clients  
24 really don't think this money counts?

25 MR. GOLDMAN: No, that is not --

1 THE COURT: Is that what you're --

2 MR. GOLDMAN: -- what I'm saying, Your Honor.

3 THE COURT: -- ultimately saying here in terms of  
4 saving lives and addressing the opioid crisis?

5 MR. GOLDMAN: No, it is not, and I would  
6 acknowledge that it certainly does count. The point I'm  
7 trying to make is that they are trying to translate that  
8 into grievous harm based on not knowing what the amount is  
9 going to be disbursed during this limited duration and for  
10 what purposes.

11 THE COURT: But he wasn't responding to just a  
12 limited duration. The motion sought a stay through the  
13 entire appeal process through the Supreme Court. So these  
14 declarations address through the end of 2023 and through the  
15 end of 2024. I agree with you. If you're looking for or if  
16 I'm considering a shorter injunction, then this information,  
17 although still meaningful because if anyone dies, that  
18 pretty important.

19 MR. GOLDMAN: Yes.

20 THE COURT: Plus all of the other societal harms  
21 that flow from not having the funding start. But if the  
22 funding isn't really going to start in any event until --  
23 let's pick a date. And I'm not talking about the effective  
24 date now, I'm talking about when funding would actually  
25 start. Let's say that's January 1, then your point is a

1 point on argument, not an evidentiary point, which is that  
2 this declaration doesn't say that there's any harm  
3 specifically before January 1 because it doesn't establish  
4 that the funding would start then -- before then.

5 MR. GOLDMAN: Well, that is what my argument is  
6 directed to.

7 THE COURT: All right, but --

8 MR. GOLDMAN: -- Your Honor. I understand --

9 THE COURT: -- I don't think that's an evidentiary  
10 point. I think that's an argument. That's a point you can  
11 make in argument.

12 MR. GOLDMAN: Very well, Your Honor. I'll -- I  
13 will move on. And I would echo what Mr. Gold had said is  
14 that even beyond that date, we would welcome any sort of  
15 interim measures for disbursing funds for abatement and  
16 other purposes, similar to the ERF. An ERF2, if you will --

17 THE COURT: Well, the ERF didn't happen --

18 MR. GOLDMAN: -- and could even be --

19 THE COURT: -- so but I take your statement now  
20 seriously.

21 MR. GOLDMAN: Thank you, Your Honor.

22 THE COURT: Okay.

23 MR. GOLDMAN: I was just going to make the point  
24 it could be implemented pursuant to 363(b) and not pursuant  
25 to the plan to remove any idea that it would be -- cause



1 equitable moot.

2 THE COURT: Okay.

3 MR. GOLDMAN: Just moving onto the declarations  
4 that the UCC submitted, I think we -- from the two members  
5 who have experienced firsthand the devastating effects of  
6 the opioid epidemic, I think that, you know, it has to be  
7 acknowledged that of all the people who have a right to  
8 express an opinion on what will occur due to the opioid  
9 epidemic if a stay is issued, is these two people.

10 However, that does not make certain parts of their  
11 declarations admissible, which is really what we have the  
12 objection to. I think, you know, they have to be given all  
13 the solitudes for the personal loss they've suffered and  
14 admiration for what they have turned that into in terms of  
15 positive giveback. And I hope the objections or challenges  
16 to certain portions of their declarations will be taken in  
17 that vein. They're simply technical in nature in terms of  
18 establishing what record is made on these proceedings.

19 THE COURT: Well, again, I mean, I think you're  
20 objecting to one of the declarants saying that various forms  
21 of treatment have stopped over the last year or the last  
22 several months for want of funding. And asking me to draw  
23 an inference that, under the plan, similar occurrences  
24 wouldn't -- would be prevented in the future, I think she --  
25 again, I think that the witness can make a prediction of

1       that. You know, take it for what it's worth.

2               She's much closer in my mind to the facts that she  
3 outlines than just someone who isn't looking at it from the  
4 outside. But ultimately, I think it's the same point, which  
5 is it depends on when the funds start flowing and what can  
6 only make an educated prediction, which is certainly what  
7 the members of the UCC, including these two people, did and  
8 are doing. So that's how I treat those types of statements.

9               MR. GOLDMAN: I would just reiterate the point,  
10 Your Honor. There is going to be evidence that there is  
11 incalculable loss, which is the way it's phrased in one of  
12 the declarations. And I really think it should be the  
13 province of expert testimony. It is based on some  
14 specialized knowledge as to a prediction of what is going to  
15 occur and (indiscernible).

16              THE COURT: Well, but again, I -- look, I guess it  
17 depends on what you mean by the term "incalculable". You  
18 could certainly calculate the monetary costs of someone  
19 dying and their relatives having to take care of their  
20 children. But it is perfectly legitimate to say that  
21 actually isn't calculable. It may be calculable for  
22 purposes of posting a bond, but I don't think these two  
23 declarations are submitted for that purpose, for determining  
24 what the amount of a bond would be.

25              I think they're submitted for the point, which I

1 view as one that is adequately supported, that where you  
2 have this number of deaths due to opioid overdoses occurring  
3 on a daily basis, and you have insufficient funds as  
4 acknowledged by all of the lawsuits, including by the State  
5 of Washington and the State of Connecticut, that the more  
6 money you have, the fewer people will die. I mean, I don't  
7 see how you can dispute that.

8 And maybe it's one person. Maybe it's 100, but to  
9 me that's incalculable, and it's -- it pretty -- I think it  
10 does offset in terms of the balance of the harms, someone's  
11 right to pursue their appellate rights to the Supreme Court  
12 where the Supreme Court has denied certiorari on these  
13 various issues multiple times in the last decade. So again,  
14 that applies primarily, if not entirely -- and I'll hear the  
15 Debtors on this, of course, and the other parties, including  
16 the UCC's counsel, to the request for an injunction through  
17 the entire appellate process.

18 It may not apply in a meaningful way to an  
19 injunction through a ruling by the District Court where it's  
20 not clear to me that money would be flowing in any event  
21 during that period as opposed to personal injury claims  
22 being liquidated, as opposed to the 14 days when the  
23 abatement procedures after the effective date are supposed  
24 to be submitted, etc.

25 But I just -- I don't understand how in one breath

1 the State Attorneys General of Connecticut, Washington, and  
2 Maryland can say that their rights to decide for themselves  
3 how to pursue monetary claims against the released parties  
4 are of critical importance without focusing on the  
5 consequences of the delay caused by the -- that right.

6 MR. GOLDMAN: Well, Your Honor, it's one of the  
7 reasons why we did restrict and scale back the request  
8 that's before you now.

9 THE COURT: Okay. But I'm not going to --

10 MR. GOLDMAN: Which is a --

11 THE COURT: I'm not going to exclude anything in  
12 these two declarations other than, again, where obviously  
13 the declarant is making a prediction or stating her view as  
14 to the cause of something. It's not for the truth, but  
15 rather for her evaluation of that cause or prediction, which  
16 is what people who serve on unsecured Creditors' committee,  
17 including this one, that net 200 times and over 700 separate  
18 communications does.

19 MR. GOLDMAN: So except, Your Honor, that is all I  
20 have.

21 THE COURT: Okay. All right.

22 MR. EDMUNDS: Your Honor, if I --

23 THE COURT: Go --

24 MR. EDMUNDS: This is the --

25 THE COURT: Why don't you go ahead, Mr. Edmunds --

1 MR. EDMUNDS: Oh, I'm sorry. Go ahead.

2 THE COURT: -- and then I'll hear from Mr.  
3 Underwood?

4 MR. EDMUNDS: Okay. I just -- I -- thank you,  
5 Your Honor. I will just try to hit on some points that go  
6 to the second part of my argument that haven't been said so  
7 far to try to make it quicker. But I think that one issue  
8 that's been identified is the critical importance of the  
9 sentencing that it may have in creating a possibility of  
10 equitable mootness. And people have talked about already  
11 and argued that there is a chance there, including from some  
12 of the effects of the sentencing upon the Debtors, that may  
13 produce the grounds for equitable mootness may create  
14 irreparable harm.

15 But there's one other thing that people haven't  
16 talked about yet, and that -- and I am not an expert, but I  
17 have some experience with the difficulty of changing a  
18 sentence once it's imposed. There are constitutional,  
19 statutory, and federal criminal procedures, doctrines and  
20 issues that arise that may make it hard to undo a sentencing  
21 once it's in place. And I think that that may be one of the  
22 sources for the Debtor's clearly apparent position that, you  
23 know, that they will not agree that this -- to any  
24 stipulation against the equitable mootness of the effect of  
25 the sentencing of Perdue in the District of New Jersey.

1 I think that that's a huge issue that happens  
2 before the effective date that could be significant in its  
3 effects. And I don't pretend to know everything about it.  
4 I don't know the criminal doctrines.

5 THE COURT: Let's just move on. Okay. You raised  
6 the point, but there's no reason talking about it further if  
7 that's the extent of your knowledge. So we should move on.

8 MR. EDMUNDS: Well, I think -- I mean, I think,  
9 you know, the basics of it, the due process clause, the  
10 double jeopardy clause, Federal Rule 35, and certain  
11 provisions of the U.S. Code do place limits on it. I think  
12 that that's -- I mean, in part, it's hard to anticipate  
13 where that will go in advance, and everybody has that same  
14 difficulty. So I think that's an issue there, and I think  
15 others have talked about the immediate effect on Perdue and  
16 its business.

17 The -- our -- moving on, our motion raised other  
18 issues of irreparable harm that are not related to -- and we  
19 did not rely on the possibility of equitable mootness. We  
20 talked about in our original motion in September, the cost  
21 to the estate of going forward with a plan that may be  
22 altered or reversed on appeal. And part of that was related  
23 to the trust advances issues, but it's also related to the  
24 fact that if you look at the fee statements that are coming  
25 in, a whole lot of money is being spent on attorneys' fees

1 from the estate to reimburse the pursuit of the plan, things  
2 that may --

3 THE COURT: Mr. Edmunds, I've never seen that as a  
4 basis for irreparable harm to an Appellant. Ever. And --

5 MR. EDMUNDS: I think that the --

6 THE COURT: -- frankly, it goes to the assessment  
7 of merits. So I guess to me, that just doesn't make sense,  
8 that argument.

9 MR. EDMUNDS: I mean, I -- the point I would make,  
10 Your Honor, is that if potentially millions in fees are  
11 expended from the estate in pursuit of implementing the  
12 plan, that's money that the estate doesn't get back. It may  
13 not -- in fact, I'm -- I agree it would not equitably moot  
14 an appeal, but --

15 THE COURT: It's not anything of an equitable  
16 mootness.

17 MR. EDMUNDS: But it is still irreparable harm.

18 THE COURT: It's not a basis for irreparable harm.  
19 It's not -- cite me one case on that point.

20 MR. EDMUNDS: We really don't have a case, Your  
21 Honor. It's just --

22 THE COURT: Then please move on.

23 MR. EDMUNDS: -- logical that if the estate --

24 THE COURT: That is not a basis for irreparable  
25 harm. It just isn't.

1 MR. EDMUNDS: All right. I will move on. The  
2 other irreparable harm that exists, though, is I think the  
3 possibility of implementing the plan and changing  
4 relationships, and then you're having to roll it back if  
5 it's changed or if it's reversed.

6 THE COURT: Is that another word for mootness.

7 MR. EDMUNDS: No.

8 THE COURT: No?

9 MR. EDMUNDS: I don't think it is, Your Honor. I  
10 think that there are things that the Court has ruled, and  
11 Debtors have stipulated that don't constitute irreparable  
12 harm that are happening -- or that don't constitute a ground  
13 for equitable mootness that are happening right now that do  
14 constitute a potential irreparable harm. How significant  
15 they are --

16 THE COURT: Like what?

17 MR. EDMUNDS: -- is I think --

18 THE COURT: What are you talking about?

19 MR. EDMUNDS: They are, to the best of my  
20 understanding, going about forming structures, registering.  
21 I understand that there is regulatory activity that is  
22 involved on the sort of licensing side. They are -- and  
23 they're continuing their operations, moving forward with  
24 operations amid uncertainty. And there's been a lot of, I  
25 guess, question in the papers of whether there's evidence of



1 the effects of that uncertainty on the business.

2 But I would point out that these are the very  
3 things that they use to justify their first day motions.  
4 And the -- in docket number 3, the declaration of John Lowne  
5 changing things --

6 THE COURT: So can I interrupt --

7 MR. EDMUNDS: -- changing their cash management --

8 THE COURT: -- you? So is --

9 MR. EDMUNDS: -- systems.

10 THE COURT: Is the State of Maryland not amenable  
11 unlike the State of Washington and the State of Connecticut  
12 to permitting new code to be formed, for example? The types  
13 of stipulations that Mr. Gold and Mr. Goldman were referring  
14 to.

15 MR. EDMUNDS: I think I'd have to -- we are  
16 amenable to some form of agreement, but I think I would have  
17 to look at the precise contours of that and make an  
18 evaluation as to how serious it was. So not as I sit here  
19 today, I don't think I can agree to that without some sort  
20 of detail about what it is.

21 You know, it -- there are risks and there are  
22 harms inherent in anything that happens, and I think it  
23 requires sort of a precise evaluation as to whether we would  
24 agree to that. And I'm just not -- I don't even know  
25 exactly what the requirements or what the permissions would

1 be.

2 THE COURT: Well, the general concept would be  
3 that -- and I believe Mr. Gold laid this out -- that the  
4 appellees would not argue equitable mootness based upon a  
5 transfer of the Debtor's business as provided for under the  
6 plan to NewCo and making the initial distribution under the  
7 plan. Either under the plan or in the form of a 363 motion.

8 MR. EDMUNDS: Your Honor, I mean, I think that the  
9 -- things that significant, there may be ways you could --  
10 nuances that you can remove from it, but I think that things  
11 that significant carry with them the possibility of  
12 irreparable harm. Both from the possibility of mootness and  
13 from the sheer fact that you might be unwinding, which  
14 independent of equitable mootness will cause some amount of  
15 loss. And it may not add up to the amount of loss that  
16 would --

17 THE COURT: Let me make sure I understand --

18 MR. EDMUNDS: -- could be substantial  
19 consummations.

20 THE COURT: -- this. You lost below, right? You  
21 lost. You're now seeking a stay pending appeal, and yet  
22 you're arguing that if you win, which is an "if", the cost  
23 of unwinding itself is irreparable harm? That's really what  
24 you're saying?

25 MR. EDMUNDS: I think that there are costs

1 associated with going forward now, both to the estate and to  
2 everyone else, that warrant consideration as part of the  
3 balance of hardships that --

4 THE COURT: So you're saying irreparable harm  
5 would --

6 MR. EDMUNDS: -- you know, that the Court has to  
7 undertake.

8 THE COURT: You're saying irreparable harm is  
9 literally proceeding with the order itself.

10 MR. EDMUNDS: I think -- again, I would have to  
11 look at the details of the --

12 THE COURT: Mr. Edmunds --

13 MR. EDMUNDS: -- specific exceptions.

14 THE COURT: -- look, do you have anything more to  
15 say on any --

16 MR. EDMUNDS: Yeah, that's usually --

17 THE COURT: Do you have anything more to say --

18 MR. EDMUNDS: I do.

19 THE COURT: -- on this point or any other point?

20 MR. EDMUNDS: I do, Your Honor. I mean --

21 THE COURT: All right.

22 MR. EDMUNDS: -- I will try to move on from it,  
23 but let -- but I would say -- I would note that the very  
24 hardships that I'm talking about are written throughout  
25 their first-day motions and in the declarations that they

1 submitted in support of that. They talk about changing  
2 structure and changing organization and changing management.

3 THE COURT: But that's before they won, and your  
4 state is appealing it. It's a big difference, so move on.  
5 Honestly.

6 MR. EDMUNDS: I think the hardships --

7 THE COURT: You know, this wasn't made in your  
8 objection.

9 MR. EDMUNDS: -- as a matter of fact, so --

10 THE COURT: This wasn't made in your motion or  
11 your reply, and if it was, it would've just been devastated.  
12 So move on. This is just silly.

13 MR. EDMUNDS: It was -- just to be clear, Your  
14 Honor, it was in our motion. And we did not rely on  
15 equitable mootness, but I will move on.

16 I would also just talk briefly about the issue of  
17 the irreparable harm that the appellees raised, the  
18 objectors raised. I think the Court is correct that we all  
19 see it as getting more money for the abatement, for the  
20 opioid crisis, and to address the opioid crisis is  
21 important. But there are other trades that are made in  
22 pursuit of this plan that I think make it hard for them to  
23 establish that the harm that they suggest will occur will  
24 actually occur from a short stay --

25 THE COURT: Okay. We covered --

1 MR. EDMUNDS: -- to the appellate process.

2 THE COURT: We covered this, Mr. Edmunds. I -- we  
3 -- we've covered this point. And in fact, I generally  
4 agreed with the other -- with your colleagues on this. So I  
5 don't think we need to go over this again.

6 MR. EDMUNDS: Well, I'd just say that there is the  
7 deterrence effect and there are the other, I think, benefits  
8 from doing more, that the State of Maryland at least sees  
9 from proceeding to do more to enforce its laws. And I think  
10 that those have sort of a canceling effect on, you know, any  
11 hardship that -- concrete hardship that could be raised by  
12 the other parties.

13 So with that, I will -- I think those are the  
14 critical points, and I'll rely on others for their previous  
15 arguments.

16 THE COURT: Okay. Thank you.

17 MR. BASS: Judge Drain, this is Mr. Bass, Ronald  
18 Bass. May I come in?

19 THE COURT: Well, I -- someone was actually in the  
20 queue before you. Let's do Mr. Underwood first.

21 MR. BASS: Oh, okay.

22 THE COURT: And then we'll -- I'll hear from you.

23 MR. BASS: Okay. Okay.

24 MR. UNDERWOOD: Thank you, Your Honor. Allen  
25 Underwood, on behalf of Canadian municipalities -- certain

1 Canadian municipalities and First Nation creditors.

2 Very briefly, I'd like to again adopt the  
3 positions of Connecticut and Washington as stated here and  
4 in their papers. I think what's very important and what  
5 we've emphasized throughout this case is that the Canadian  
6 municipalities and First Nations are a little different than  
7 the states with regard to certain legal issues. And that  
8 has an impact on, A, what Judge McMahon is deciding but it  
9 also has an impact on the irreparable harm issue that we're  
10 -- I think we're discussing. There's no question that the  
11 Canadian municipalities have read direct claims against non-  
12 debtor, shareholder released parties.

13 THE COURT: I think there's a substantial  
14 question, and that's what I found in my ruling.

15 MR. UNDERWOOD: I believe under Canadian law, they  
16 have claims under the Competition Act, that -- it's a fairly  
17 broad act that enables direct claims against -- and this is  
18 I guess a fundamental problem, Judge, is that we've got a  
19 corporate structure that has parallel ownership.

20 It's not -- it's not like a typical subsidiary  
21 relationship. One -- is controlling multiple --  
22 corporations. In effect, the shareholder -- whether through  
23 non-debtor entities that are U.S. entities or direct action  
24 on boards -- are controlling those entities. And under  
25 Canadian law, there's a basis for direct claim against those

1 parties.

2 Obviously the problem or the question or the  
3 interpretation of the plan and whether or not the release as  
4 granted occupies the territory fully -- that's the  
5 structural problem -- the appeal is we believe meritorious.  
6 And ultimately -- irreparable harm which is that ultimately  
7 these Canadian creditors stand to lose the claims they may  
8 have against U.S. non-debtor entities or U.S. released  
9 shareholders -- confirmed plan.

10 It's a structural problem. It's a structural  
11 problem that the debtors and the Sacklers created when they  
12 created their corporate structure. That's all it is. I  
13 wish I could change it.

14 THE COURT: Well, all I will note is I don't think  
15 you addressed this legal argument on the nature of the  
16 Canadian creditors' claims anywhere in your motion.

17 MR. UNDERWOOD: I actually believe that there is a  
18 reference.

19 THE COURT: Where is it?

20 MR. UNDERWOOD: Within -- certainly within my  
21 reply. I actually quote a portion of the brief. I think --  
22 let me pull up the page that referenced this issue. It's  
23 cited in the reply, Your Honor. And it's more than alluded  
24 to in the actual motion.

25 And to remind you, Your Honor, the motion was

1 actually filed in advance of the briefing before the  
2 district court. So I believe if we look at, yeah, Page 4,  
3 Paragraph 8.

4 THE COURT: Okay. I see it.

5 MR. UNDERWOOD: So there is a colorable basis for  
6 a claim by my clients against non-debtor, third-party  
7 released parties. And irreparable harm, as we cited in the  
8 reply and I think in the moving papers, is the loss of that  
9 financial claim or right.

10 So that's a principal question that I think in the  
11 first instance you're looking for which is what is the  
12 irreparable injury in the absence of a stay. And that is  
13 obviously the concern.

14 I think in terms of the resolution of the matter,  
15 I think Your Honor is very thoughtful on this question of a  
16 longer stay versus a shorter stay, a stay through finality  
17 versus a stay more or less governed by a Rule 8025. And  
18 certainly I think that the Canadian appellants take the  
19 position that a stay 14 days -- through 14 days after the  
20 rendering of the district court decision is more than  
21 adequate at this time.

22 But I do think it is a thoughtful question by Your  
23 Honor because honestly the circumstance where a trial court  
24 would be looking at whether or not to stay its own decision  
25 for longer than any determination that might be made by an



1     appellate court would be a circumstance where the trial  
2     court recognized that there's some aspect, be it  
3     constitutional or structural, in the plan that would be  
4     jeopardized were it not stayed, meaning that there's  
5     something about it that deserves finality. And I would  
6     leave that question to Your Honor's best judgment.

7             But I would also repeat that in terms of the stay,  
8     the lesser of the two alternatives that Your Honor described  
9     is certainly -- is certainly acceptable to the First  
10    Nations, without waiving whatever Your Honor might decide  
11    about a longer or a larger stay.

12            I think there's a fundamental interesting question  
13    with regard to the sentencing and the plea agreement, and it  
14    is a problem. And I think in terms of it, I've read the  
15    plea agreement many times. I see it as little more than a  
16    financial settlement, and that's what we do in this court.  
17    And ultimately I'm not aware of due process issues that  
18    would bar a stay through the date of sentencing with regard  
19    to the defendants.

20            I think it makes a huge amount of sense because  
21    whether or not the sentencing gives rise to equitable  
22    mootness is going to impact what may happen subsequent to  
23    the appellate process because obviously you've got your  
24    superpriority claim that may come into effect if for any  
25    reason the terms of the plan are modified such that -- you

1 know, such that the plea is -- the plan isn't funded. So  
2 that would be the concern.

3 So although certainly the Canadian First Nations  
4 agree that the lesser of the two stays that Your Honor had  
5 explained would be sufficient here, I would request that the  
6 Court be mindful of the fact that the sentencing will have a  
7 material impact on this case and, depending upon the results  
8 of the appellate process, it may completely impact whether  
9 or not the assets of the debtor can be liquidated and how,  
10 if it came to that -- I don't think anybody wants it to come  
11 to that, but if it did, the fact that the sentencing had  
12 gone forward might be a problem if it's not a basis for  
13 equitable mootness.

14 So ultimately, Your Honor, I mean, I think that's,  
15 you know, by in large the points that I wanted to make or  
16 things that perhaps I wanted to highlight from our concern.  
17 Ultimately I think the harm that we have here is an  
18 interesting circumstance of -- so effectively the IACs are  
19 non-debtor parties.

20 Those are the assets that in part, over time, will  
21 fund the trust in the United States. My clients are  
22 presently stayed from pursuing those assets. Whether or not  
23 that remains to be the case will be the subject I suppose --  
24 and the determination before the CCAA court in Canada which  
25 is pending for December 1. And that's another example.

1 I'm not sure if it's irreparable harm. But it is  
2 an instance of another intervening deadline with regard to  
3 an international matter where it might be worth the  
4 consideration of the Court of the fact that a stay here  
5 would probably relieve that Canadian court of a difficult  
6 decision. And maybe I'm wrong. I don't know. But that  
7 would be my take on it.

8 So, but ultimately I think the debtor has  
9 ultimately the benefit of these IAC assets. These are  
10 assets that ultimately my clients would be seeking to  
11 recover from if they're permitted to do so by way of appeal  
12 or before the CCAA court.

13 And I'm making this argument with reference to the  
14 bond issue because, first of all, I'm not aware of the  
15 debtor having an affirmative claim against the CMFN.  
16 Frankly if they're sovereigns, there's a question of whether  
17 or not there would be an applicable need for a bond under  
18 that circumstance.

19 But ultimately what's interesting is that it's  
20 arguable that the debtors in fact have a lien on Canadian  
21 assets by virtue of the settlement such that I would say  
22 whether or not Your Honor finds a need for posting of a bond  
23 by any other appellate creditor here, ultimately because of  
24 the fact that these Canadian assets are dedicated under the  
25 existing plan and settlement and trust to the debtor, that I

1 think there's a strong argument that the debtor is protected  
2 and there should be no need for an appellate bond with  
3 regard to the Canadian creditors here. That's all I have to  
4 say --

5 THE COURT: I'm sorry. What Canadian assets are  
6 you referring to?

7 MR. UNDERWOOD: Purdue Canada. At a bare minimum,  
8 Purdue Canada because it's dedicated to -- you know, to sale  
9 and contribution to the debtor. I can't -- I can't speak,  
10 and don't want to speak directly to the extent to which  
11 Purdue Canada has been securitized pursuant to those  
12 settlement agreements. But it may have been.

13 THE COURT: But the bond would be to protect  
14 against the damage, if any, caused by the delay or any other  
15 factor that the stay would occasion. So it would be  
16 something beyond what the debtors already have.

17 MR. UNDERWOOD: Right. But that's presuming that  
18 there is -- I think the argument would be that -- and I do  
19 think there's some case law to this effect, that, in effect,  
20 the debtors already have a form of a lien. I agree --

21 THE COURT: But it's not a lien on your clients'  
22 assets. It's their own assets.

23 MR. UNDERWOOD: It's not --

24 THE COURT: They already have it. They already --  
25 no, but they already have it. The bond would be to bond

1       against damage that your clients would cause.

2               MR. UNDERWOOD: Right. I would -- I would differ.  
3 But thank you, Your Honor. I appreciate your --

4               THE COURT: Well, I mean, that was the result in  
5 the Adelpia case. Okay. Just 361 B.R. 337, S.D.N.Y.  
6 (2007). Excuse me. Okay. Thank you, Mr. Underwood.

7               MR. UNDERWOOD: Thank you, Your Honor.

8               THE COURT: Okay. Mr. Bass, are you still there?

9               MR. BASS: Yes. I'm here. I'm here, Your Honor.

10              THE COURT: Okay. All right.

11              MR. BASS: Well, I also filed a motion for a stay.  
12 Go ahead. What were you saying? I apologize.

13              THE COURT: No. I can hear you fine.

14              MR. BASS: Oh, okay. I had filed a motion for a  
15 stay, and I have gotten an order from Judge McMahon to have  
16 my briefing on the 19th. So I asked her an extension of  
17 time. So I'm asking you wait until she hear my motion -- I  
18 mean my brief, then we can proceed. So that's what I'm  
19 waiting for, her order of an extension of time.

20              THE COURT: Okay. Well --

21              MR. BASS: Besides -- one more thing. And I'm  
22 trying to get that merged. The cases that I have in the  
23 bankruptcy court with the Mallinckrodt to merge it with this  
24 here so she can handle both of them -- both of them, both of  
25 the cases.

1 THE COURT: All right. Okay. Anything else?

2 MR. BASS: No. I'm just waiting for -- you know,  
3 grant me the -- that order to stay as well as adopt the  
4 position --

5 THE COURT: I'm sorry. I heard you through, "As  
6 well as you adopt," and then I couldn't hear the rest.

7 MR. BASS: No. I said adopt the position of  
8 Lauren (ph), the attorney, the female attorney who came on,  
9 I said I am adopting -- I am adopting her position.

10 THE COURT: Okay.

11 MR. BASS: -- against the shareholders and, you  
12 know --

13 THE COURT: Okay. All right. Well, on your first  
14 point, the briefing schedule set by Judge McMahon on your  
15 appeal of the confirmation order is not the subject of a --  
16 it's not something that I can stay. It's not my order, and  
17 it's not really covered by the bankruptcy rules. That's  
18 something you'll have to take up with her --

19 MR. BASS: Right.

20 THE COURT: -- whether you get an extension or  
21 not. So that's not really an appropriate subject for a stay  
22 that I would be considering.

23 MR. BASS: Okay.

24 THE COURT: And the same goes for your desire to  
25 have the district court consider together your appeal of the

1 confirmation order and the other litigation that was the  
2 subject of your motion that I heard back in mid-October.

3 MR. BASS: Right.

4 THE COURT: And I denied that motion in an order  
5 entered on October 15th that's at Docket Number 3958.

6 MR. BASS: Right.

7 THE COURT: But again, if any of that litigation  
8 is to be consolidated with your appeal, that's really up to  
9 Judge McMahon. It's not -- it's not something that I could  
10 rule on.

11 MR. BASS: Oh, all right.

12 THE COURT: Okay. Okay. I think the only movant  
13 that I haven't heard from is Ms. Isaacs, who adopted the  
14 motion filed by the State of Washington, and of course we've  
15 heard the State of Washington and the State of Connecticut  
16 at length. So I don't know if you have anything further,  
17 Ms. Isaacs, to say. No? All right.

18 It's quarter to 2:00. We've obviously been going  
19 for a long time. I'm going to take a break for lunch, and  
20 be back at 2:30, at which point I'll hear from the  
21 objectants and, if warranted, brief rebuttal. And then I'll  
22 give you my ruling.

23 (Recess)

24 THE COURT: Okay. Good afternoon. We're back on  
25 the record In re Purdue Pharma, LP, et al, and the motions

1 by various parties, various Appellants, for a stay pending  
2 appeal of my confirmation order in the so-called advance  
3 order or preparations order. And we're turning to the  
4 objectors at this point.

5 MR. KAMINETZKY: Good afternoon, Your Honor.  
6 Benjamin Kaminetzky, of Davis Polk, for the Debtors. I see  
7 Ms. Isaacs is on the line.

8 THE COURT: Okay.

9 MR. KAMINETZKY: Do you want to --

10 THE COURT: Well, I had asked whether Ms. --  
11 before we broke, I had asked Ms. Isaacs whether she wanted  
12 to add anything to her motion, which adopted the motion by  
13 the State of Connecticut and the State of Washington and  
14 didn't get a response. So, Ms. Isaac, I don't know if you  
15 have anything more to add to what you filed? You're on  
16 moot.

17 MS. ISAACS: I'm sorry. Thank you for taking the  
18 time to hear me this afternoon. I understand you called me  
19 before lunch break.

20 THE COURT: Yes.

21 MS. ISAACS: There's been multiple emails going  
22 back and forth. I am having a great deal of difficulty with  
23 the Clerk's office in getting the Zoom links and getting  
24 onto Zoom. As for anything to be added at this time, I  
25 stand with the Trustees and all of the states that are in



1 disagreement with what's going on with the appeal. And  
2 that's all I have.

3 THE COURT: Okay. Thank you. All right. So I'll  
4 hear briefly from the objectants and, again, I read the  
5 objections and all the other pleadings. I would like to  
6 focus again primarily, I think at this point, on the shorter  
7 term stay, the alternative request by the movants for a stay  
8 through the ruling by the District Court of some or all of  
9 the confirmation order, or perhaps just the effective date.

10 I also note that I have a number of declarations,  
11 which we've already discussed during the discussion of  
12 Connecticut and Washington's motion. I don't know if you  
13 want to -- I mean, different people have put up these  
14 different witnesses, but I don't know if you want to deal  
15 with those first or you have a time when you want to  
16 introduce those declarations. I leave that up to the  
17 objectors also.

18 MR. KAMINETZKY: Thank you, Your Honor. Again,  
19 Mr. Kaminetzky, of Davis Polk, for the Debtors. So I guess  
20 I could move for the admission of Mr. DelConte's  
21 declaration, just to get that over with at this point. I  
22 could address --

23 THE COURT: Okay.

24 MR. KAMINETZKY: It sounds like the Court has  
25 already ruled on, I guess it was the motion to exclude that

1 testimony. I'm happy to respond to the points you've made -  
2 -

3 THE COURT: No, I --

4 MR. KAMINETZKY: -- but it's sounds like we've  
5 done that already.

6 THE COURT: I did. I ruled on that. So is Mr.  
7 DelConte available?

8 MR. KAMINETZKY: Yes, Your Honor. He's here.

9 THE COURT: Okay. Can you put him on the screen?

10 MR. KAMINETZKY: Yes. I'm told any second now.

11 THE COURT: Okay.

12 MR. KAMINETZKY: You know, he was in his -- I'm  
13 sorry.

14 THE COURT: Okay. Can you hear me, Mr. DelConte?

15 MR. DELCONTE: I can. Can you hear me?

16 THE COURT: Yes, I can. Thank you. And see you  
17 as well.

18 MR. DELCONTE: Can you hear me?

19 THE COURT: Yes.

20 MR. DELCONTE: Okay.

21 THE COURT: And I can see you too. So, Mr.  
22 DelConte, you submitted a declaration intended to be your  
23 direct testimony in connection with the objection to the  
24 stay motions. It's dated October 22, 2021. Would you raise  
25 your right hand, please? Do you swear to tell the truth,

1 the whole truth, and nothing but the truth, so help you God?

2 MR. DELCONTE: I do.

3 THE COURT: Okay. And it's D-E-L-C-O-N-T-E, J-E-  
4 S-S-E?

5 MR. DELCONTE: That's correct.

6 THE COURT: Okay. So, Mr. DelConte, as I said,  
7 you submitted a declaration in connection with these matters  
8 on October 22, 2021. Sitting here today, November 9th,  
9 knowing that it would be your direct testimony, is there  
10 anything in it that you wish to change?

11 MR. DELCONTE: No, sir.

12 THE COURT: Okay. Does anyone want to cross-  
13 examine Mr. DelConte on his declaration? And again, I've  
14 limited that declaration to the extent that I ruled so in  
15 the colloquy with Mr. Goldman. Okay. Mr. DelConte, I had a  
16 question for you. Do you have your declaration there?

17 MR. DELCONTE: I do.

18 THE COURT: Okay. In your declaration, you  
19 discuss the timing of payments under the plan and describe  
20 them in Paragraphs 7 through 9 and 12 through 21, and also  
21 payments to fund the NewCo under the plan in Paragraph 22.  
22 And then in Paragraph 26, 27 and 28, you do that present  
23 value calculation based on your assessment of the delay in  
24 distributions that would result from a stay of three months  
25 through 6, 9, 12, 18 and 24 months. Do you see that there?

1 MR. DELCONTE: Yes, I do.

2 THE COURT: Okay. My question is, assume for the  
3 moment a stay through the date of a ruling by the District  
4 Court of the effective date of the plan, and then tack on 14  
5 days to that. So assume that would be sometime, let's just  
6 say, in the third or fourth week of December. Obviously,  
7 I'm making a prediction on how the District Court might  
8 rule. The court might rule later than that; might rule  
9 earlier than that. When you say three months, what are you  
10 tracking off of as the effective date?

11 MR. DELCONTE: I'm tracking off of the end of the  
12 year, which a good proxy for when, you know, I think the  
13 earliest that we could potentially emerge would be. So a  
14 three-month delay in this case would be delaying emergence  
15 from December 31st to the end of March.

16 THE COURT: Okay. And --

17 MR. DELCONTE: 2022.

18 THE COURT: I got it. And the distributions that  
19 would be -- that you track as coming in on the effective  
20 date for that period, are any of those distributions to the  
21 end-users of the money, or are those distributions to the  
22 trust and to NewCo?

23 MR. DELCONTE: Yeah, those distributions that  
24 we're tracking, and these are the distributions to -- both  
25 the Federal government and the creditors are in public

1 trusts. Those are just the timing of those payments --

2 THE COURT: So there would be a distribution to  
3 the Federal government --

4 MR. DELCONTE: -- to those trusts, not -- we  
5 haven't taken into account any -- yeah, I mean, there's the  
6 \$225 million payment to DOJ and there's a \$25 million  
7 payment to other Federal entities, in addition to the  
8 trusts; \$600-some-odd million would be distributed to the  
9 creditor of the public trusts. And we're tracking the  
10 payments to those trusts. We haven't done anything to take  
11 into account payments from those trusts ultimately to the  
12 end-users.

13 THE COURT: Okay. All right. Then is there some  
14 amount that would also go to fund NewCo, or is that just  
15 there already, in essence?

16 MR. DELCONTE: Yeah, I mean, that money is  
17 currently sitting at OldCo or PPLP, and at emergence, \$200  
18 million of that would go to NewCo. As far as the harms that  
19 we've looked at here, we've only been looking at harm as it  
20 relates to the distributions that would ultimately go to  
21 either the Federal government or the various trusts. We  
22 haven't taken into account anything that the (sound drops)  
23 distributed to NewCo.

24 THE COURT: Okay. All right. Those are my only  
25 questions. Thank you. I don't know if you have any

1 redirect on that, Mr. Kaminetzky? No?

2 MR. KAMINETZKY: I do not, Your Honor. Sorry.

3 THE COURT: Okay. Your testimony is complete, Mr.  
4 DelConte. You can go off screen now.

5 MR. DELCONTE: Okay. Thank you very much.

6 (Declaration of Jesse DelConte Admitted Into  
7 Evidence)

8 MR. KAMINETZKY: Okay, Your Honor. Shall I  
9 proceed?

10 THE COURT: Yes.

11 MR. KAMINETZKY: Okay. Again, Benjamin  
12 Kaminetzky, of Davis Polk, for the Debtors. So, Your Honor,  
13 I'm going to take your guidance, of course, and at first  
14 I'll focus on what we'll call the short-term period between,  
15 let's call it, now and the District Court's ruling.

16 And Your Honor, what we've done is we've provided  
17 and have been willing to provide complete protection to the  
18 movants against all risk of equitable mootness in the near  
19 term, which would allow for Judge McMahon to decide the  
20 pending appeals on the merits and would have eliminated the  
21 need for today's hearing, but we're already here. And all  
22 that we ask for is an escape hatch for the movants to  
23 renote the motion in a proper forum if there's any risk  
24 that mootness were to arise in the future in a situation  
25 that we quite frankly don't expect to happen.

1           And this is exactly what Your Honor suggested we  
2           do, which was to try to "hit the sweet spot," based on a  
3           reasonable prediction of when the District Court might rule.  
4           So let's be crystal clear on where we are right now and what  
5           it is that the movants have refused to accept.

6           The Debtors and the other plan proponents have now  
7           made the following six unilateral concessions in writing,  
8           signed, which provides everything the movants can get out of  
9           this hearing. Now, Your Honor noted that the movants need  
10          to show harm, not just conjecture -- I wrote those words  
11          down -- but we have eliminated even conjecture. What do I  
12          mean by that?

13          Every single party that intends to present  
14          arguments or evidence to the District Court on appeal. That  
15          includes the Debtors, the UCC, the AHC, the MSGE, the NAS  
16          group. Both sides of the Sackler Family have stipulated in  
17          writing to you, to the District Court, that they will never  
18          argue before any court that the appeals of the confirmation  
19          orders have been rendered equitably moot by the actions  
20          taken in advance of the effective date in furtherance of the  
21          plan, pursuant to both the confirmation order and the  
22          advance order. Okay?

23          This agreement is set forth in stipulation and was  
24          filed on October 20th on the District Court's docket. The  
25          Debtors have agreed that the effective date will not occur

1       until the earlier of seven days following a decision by the  
2       District Court on the appeals and December 30th. In  
3       addition, Sir, the Debtors have the --

4               THE COURT: Can I --

5               MR. KAMINETZKY: Sorry.

6               THE COURT: Can I just stop you there? So, on the  
7       stipulation, the movants have said that you've carved out  
8       arguing equitable mootness with respect to the sentencing  
9       and its effects.

10              MR. KAMINETZKY: Yes. And that's -- we test in  
11      the next point, Your Honor.

12              THE COURT: Okay.

13              MR. KAMINETZKY: We have agreed that we will not  
14      request that the criminal sentencing take place before  
15      December 20th. Now, under the plan, as Your Honor knows,  
16      the sentencing hearing could otherwise occur as of December  
17      1st. But let's just pause for a second on that, just so  
18      it's clear.

19              The plea and sentencing is pursuant to a separate  
20      agreement with the DOJ, not the plan and confirmation.  
21      There was some confusion about that, but that's not  
22      something that's addressed under the plan. That's something  
23      we agreed to to the DOJ. But lest you think we're hiding  
24      anything, we've also agreed that we'll file a notice on the  
25      docket -- and obviously, it will be on the New Jersey



1 court's docket -- when the criminal sentencing hearing is  
2 scheduled.

3 And lest you think we're hiding anything and not  
4 being transparent, the sentencing hearing has not been  
5 scheduled, and suffice it to say that scheduling a  
6 sentencing hearing in a U.S. District Court can take several  
7 weeks. And we haven't asked -- we haven't reached out yet  
8 to schedule that sentencing hearing.

9 So isn't something that could happen in the dead  
10 of night without any notice. This is a sentencing hearing  
11 in a very public case. There'll be plenty of notice. And  
12 we've agreed already in writing that the earliest it  
13 possibly could occur is December 20th. But again, that date  
14 -- we haven't even reached out to obtain a sentencing date.  
15 And when I say we, I mean we and/or the DOJ.

16 THE COURT: Well --

17 MR. KAMINETZKY: Okay. So that's number --

18 THE COURT: Okay. Why don't --

19 MR. KAMINETZKY: -- four. The --

20 THE COURT: Why don't you go through all the  
21 points, and I'll come back to questions I have.

22 MR. KAMINETZKY: Okay, good. Number four, the  
23 Debtors will provide no less than 14-days' notice of the  
24 actual effective date. And that was something Judge McMahon  
25 asked us to do, and we obviously have agreed to do it. I

1 already talked about that we'll file on the docket when the  
2 criminal sentencing has been scheduled.

3 And finally, the plan opponents agree that the  
4 movants may renew their stay motions or file a new motion as  
5 of the earlier of the District Court's decision on appeal  
6 and December 15th.

7 So these concessions provide the movants complete  
8 protection from the risk of equitable mootness until  
9 December 20th at the earliest and would either allow the  
10 District Court to decide the appeals on the merits, or if  
11 contrary to everyone's expectation, Judge McMahon's ruling  
12 is delayed, tee up the stay motions at a later point in  
13 time, before any risk of mootness becomes imminent.

14 We've built everything in so that the two things  
15 that could possibly render -- you know, arguably render  
16 anything equitably moot, we've built into the stipulation  
17 that we've provided, protection that they could come back to  
18 court and make any -- renew this motion.

19 So there's literally -- I mean, the only harm that  
20 they could articulate --

21 THE COURT: Well --

22 MR. KAMINETZKY: -- in the short-term stay or in  
23 the short-term period is the equitable mootness, and we have  
24 taken it off the table.

25 THE COURT: So could I explore that for a minute

1 or two?

2 MR. KAMINETZKY: Please.

3 THE COURT: I expect you heard me initially having  
4 some doubt as to how the sentencing, when it occurs,  
5 arguably give rise to equitable mootness. And I was told  
6 one thing, and perhaps two. First I was told that if the  
7 sentencing occurs, there will be tremendous pressure to go  
8 effective at that point, because the Debtors, as opposed to  
9 NewCo, which only exists under the plan if the plan goes  
10 effective, would not be able to continue on in their  
11 business. What is your response to that?

12 MR. KAMINETZKY: That might very well be the case.

13 THE COURT: Okay.

14 MR. KAMINETZKY: That the -- again, it's not  
15 necessarily two seconds later, but there's certainly a risk  
16 of that.

17 THE COURT: Well, how --

18 MR. KAMINETZKY: And that is why we're not --

19 THE COURT: How soon afterwards does that happen?

20 MR. KAMINETZKY: Well, I'm not sure. I don't  
21 think it's necessarily up to us.

22 THE COURT: Okay.

23 MR. KAMINETZKY: I'm not the expert in this area.  
24 But I'm not here to argue that the sentencing isn't a very  
25 big deal. I'm here saying that there's no risk that that

1       could happen under the stipulation that we've provided, or  
2       are willing to provide, or have provided to the other side  
3       without giving them an opportunity to come back and get a  
4       stay, if necessary.

5               Obviously, if we're in that position and Judge  
6       McMahon hasn't ruled yet, we'll take that into account and  
7       most likely extend that date. We're not --

8               THE COURT: Well --

9               MR. KAMINETZKY: -- here trying --

10              THE COURT: I'm sorry. What is the harm to the  
11       Debtors and the other Appellees of delaying the sentencing,  
12       or having the Debtors request a sentencing hearing date that  
13       would be, say, at the end of December? Is there some  
14       difference between December 20 and December 31, or...?

15              MR. KAMINETZKY: No, there's no -- if you want  
16       another 10 -- put it to December 31, we're happy to do this.  
17       The issue here, Your Honor, is we all are expecting -- and  
18       if you were at Judge McMahon's hearing, we heard it -- she  
19       put this -- what she called a "rocket docket." We all  
20       expect her to rule promptly.

21              The only risk we are protecting -- you know, why  
22       can't I just get up and say we'll give them -- you know,  
23       we'll stipulate until Judge McMahon's ruling. In all likely  
24       circumstances, that's what we're doing. We just feel as  
25       fiduciaries, you know, who knows what could happen. So we

1 want some outside date that if Judge McMahon, for whatever  
2 reason, doesn't rule by then, we could come back to you or,  
3 you know, we could see where we are.

4 We just can't right now say, you know, we'll wait  
5 until Judge McMahon's ruling. Although, you know, that's  
6 where we all expect to be. Judge McMahon, again, she's  
7 scheduled oral arguments November 30th. Right after doing  
8 that, she said, "And I have a criminal trial starting on  
9 December 7th." The implication of that, I thought, was that  
10 she's going to try to rule very promptly. And that's why  
11 we've set the dates the way they are, December 20th,  
12 December 30th.

13 But, you know, those are all -- and that's why we  
14 just want the back-up drop-dead date. But again, we all  
15 expect -- and the purpose of the stipulation is to give them  
16 comfort that nothing will happen until Judge McMahon rules,  
17 both the effective date and the sentencing.

18 THE COURT: So, can we --

19 MR. KAMINETZKY: And once we've -- Your Honor,  
20 this is -- I'm sorry.

21 THE COURT: The proposal is, as you've repeated  
22 just now, that the agreement is that the effective date  
23 would not occur until the earlier of the District Court's  
24 ruling or December 30, which places the onus on the movants  
25 to seek a ruling within the 14-day notice period that you've

1       agreed to, assuming that a ruling isn't forthcoming by  
2       December 30, right? That's really what you --

3               MR. KAMINETZKY: Right, that's --

4               THE COURT: That's what you're suggesting.

5               MR. KAMINETZKY: Yes, because -- and again, the  
6       burden is on -- let's just -- I'm not asking for a favor,  
7       Your Honor.

8               THE COURT: Right.

9               MR. KAMINETZKY: The burden is on them. Like, a  
10      stay isn't the natural state of being. A stay is  
11      extraordinary, and they have a burden. Their only burden,  
12      the only harm that they could talk about -- and again, we're  
13      limiting this to the interim period as equitable mootness.  
14      We have taken it off the table until, you know, Judge  
15      McMahon rules, for all intents and purposes. We think we're  
16      done, then.

17              And again, if there's an issue or, the only thing  
18      that we've added is a -- you know, let's say something  
19      happens and Judge McMahon doesn't rule, yes, the burden  
20      would be on them. But that's fair because we don't expect  
21      that to happen and they can't -- sitting here today, they  
22      can't meet their burden.

23              First of all, equitable mootness alone shouldn't  
24      count. But even assuming it does, and even -- and we heard  
25      Your Honor loud and clear, that Your Honor wants meaningful

1       appellate review. So do I. We've given them meaningful  
2       appellate review until Judge McMahon rules.

3               And at that point in time, Your Honor -- and I  
4       could go through the case law; Your Honor already did it --  
5       basically, that's all you could give them at this hearing,  
6       because under the vast majority of rule, with the exception  
7       of a single case that the U.S. Trustee found, is that Your  
8       Honor's kind of jurisdiction, or Your Honor's ability to  
9       impose a stay, or Your Honor's stay dissolves after the  
10      District Court rules.

11              So we're giving them, with one exception, until  
12      Judge McMahon rules. With the safety valve that the Debtors  
13      need and as plan fiduciary needs, is if something goes  
14      sideways and for some reason Judge McMahon hasn't ruled, we  
15      could come back to you at that time.

16              THE COURT: Are there other actions...? Let's say  
17      I just stayed the effective date and not the plan itself --  
18      I mean, the confirmation order itself; I stayed one of the  
19      conditions to the effective date, which would -- until the  
20      District Court ruled or December 30, whatever was earlier --  
21      are there steps that would involve either -- let me just  
22      turn to the applicable section -- the transfer of material  
23      assets under the plan or distributions to creditors before  
24      then --

25              MR. KAMINETZKY: No, no, no.

1 THE COURT: -- i.e. substantial consummation?

2 MR. KAMINETZKY: No, no and no. What we're doing  
3 now, as we've always said, we're setting up trusts, paying  
4 professionals, seeking regulatory approvals. There's no  
5 transfer of assets until the effective date. We're setting  
6 up for that effective date when the transfers actually  
7 occur. That's why it was giving ice in winter to say that -  
8 - you know, for us to make clear and stipulate again and  
9 again and again that we won't make any equitable mootness  
10 argument with respect to any actions pursuant to advance  
11 this order pertaining to the confirmation order, you know,  
12 with a sentencing that we talked about otherwise.

13 THE COURT: And --

14 MR. KAMINETZKY: So the answer is --

15 THE COURT: And that's all part of you and the  
16 Other Appellees' stipulation, that those sorts of things --

17 MR. KAMINETZKY: Stipulated to it --

18 THE COURT: Would not --

19 MR. KAMINETZKY: -- filed it on the docket.

20 THE COURT: You would not argue equitable mootness  
21 based on those sorts of things?

22 MR. KAMINETZKY: Absolutely. That's black and  
23 white. We've said it. It's filed upon the docket in the  
24 District Court, and we sent a signed version of it to the  
25 other side as well and to Your Honor.



1           Again, Your Honor, it may be a -- for us, it's an  
2     important point. If we remove the equitable mootness risk,  
3     which is the only risk or the only harm that they've  
4     identified, they are not entitled even to the short-term  
5     stay, period. And we've done that.

6           And we've taken into account anything that they've  
7     identified, including, obviously, the effective date and the  
8     sentencing, by giving them comfort that we won't seek  
9     sentencing before December 20th. If you want us to move  
10    that to December 31st, we're happy to do that as well.

11          But again, we don't control the sentencing. The  
12    District Court does. All we can say is we won't seek to  
13    schedule it until then. But again, all that we're looking  
14    for is some sort of safety valve that we think won't be  
15    necessary, because we think Judge McMahon is -- she's  
16    indicated that she realizes how exigent this is.

17          THE COURT: So I just want to make sure.  
18    Originally, I think you said that you would request that the  
19    current sentencing will not take place before December 8,  
20    but then you said December 20.

21          MR. KAMINETZKY: No, it's December -- we've agreed  
22    not to... I'm sorry. We've agreed not to seek to have the  
23    sentencing hearing occur before December 20th. That's in  
24    the current stipulation that we had sent over.

25          THE COURT: Okay. And --

1 MR. KAMINETZKY: December 8th was the earliest.

2 Just the dates are a little -- December 1st was the --

3 THE COURT: That was the earliest that it could  
4 happen.

5 MR. KAMINETZKY: It could happen. Exactly. As  
6 opposed to -- but this in a further agreement. But we're  
7 happy to -- there's nothing written in stone about December  
8 (indiscernible). But all we're trying to do is give Judge  
9 McMahon time that she needs to rule without any risk of  
10 equitable mootness between now and then. And once we've  
11 done that, they have what they need, all the harm that  
12 they've identified has been dealt with, and we should be  
13 done. It's really as simple as that.

14 THE COURT: Okay. Well, why don't I hear from  
15 counsel for the U.S. Trustee on this point.

16 MR. KAMINETZKY: Okay. All right. I'll be back.

17 MS. LEVINE: Your Honor, my video takes just a  
18 second.

19 THE COURT: No, that's fine, Ms. Levine.

20 MS. LEVINE: I'll go ahead and start. I don't  
21 know what's going on with my video. It'll come up soon.

22 But, Your Honor, I think what I've heard is that  
23 there is an agreement that there should not be equitable  
24 mootness, at least before the District Court rules. And  
25 where there is a difference of opinion is what would cause

1 that to happen. And you know, with respect to the  
2 stipulation that they've sent, it's really unclear to us.  
3 You know, that was an offer that they had sent, which we did  
4 not agree to for various reasons, including that it  
5 purported to limit our ability to seek stay relief.

6 And we're, again -- you the concern here is  
7 sentencing, which as you've heard, they do intend to argue  
8 sentencing will constitute equitable mootness, and we don't  
9 know what -- they've offered to have that, I guess, as early  
10 -- no earlier than December 20th. That's part of the  
11 stipulation, but it's attached to conditions that would  
12 limit when we could seek further state relief. That would  
13 prevent us from going back to court until December 15th,  
14 just five days before then.

15 THE COURT: Well, let's say it's December 30th  
16 instead, so you have a full 14 days.

17 MS. LEVINE: Your Honor, we were willing to  
18 discuss a stipulation in the context of trying to get to a  
19 consensual resolution --

20 THE COURT: No, no. I'm just --

21 MS. LEVINE: -- and we weren't --

22 THE COURT: -- focusing on the merits. I'm trying  
23 to figure out what's the harm in that, in what has just been  
24 proposed with the change that the sentencing also would  
25 occur no earlier than December 30. So you pretty much know

1       that the 14 days to renew the stay motion would be in mid-  
2       December, if there hasn't been a ruling by them. And you'd  
3       tea that up before the 30th.

4               MS. LEVINE: Your Honor, our concern is twofold.  
5       You know, one is making sure that we get a ruling before  
6       that day comes, with plenty of time to seek a further stay.  
7       You know, I know you disagree about this, but we do have  
8       concerns about the other activities that are going on. And  
9       the only way to ensure that someone doesn't come in and say  
10      those other activities don't cause equitable mootness is a  
11      stay. And the only sure way to ensure that they're not  
12      going to request a sentencing date that then ends up falling  
13      before a ruling by the District Court is a stay of the  
14      confirmation order. That's the only sure way we know of.

15             THE COURT: I don't understand -- I guess --

16             MS. LEVINE: And the --

17             THE COURT: You're saying because there's an  
18      outside date for the effective date, which would be December  
19      30 in the proposal, right?

20             MS. LEVINE: Well, it's the sentencing, Your  
21      Honor, that they say that they're going to --

22             THE COURT: Well, both dates. But December 30  
23      could be a date before the District Court rules.

24             MS. LEVINE: It could be, yes. And that would  
25      undermine sort of the whole project, which is to make sure

1 we're getting a ruling before there is --

2 THE COURT: But the U.S. Trustee was making  
3 emergency motions for a stay while I was still on the bench  
4 ruling on the plan. The U.S. Trustee is perfectly capable  
5 of making this motion. In fact, it's already done so, and  
6 we've already had a hearing on it. So it wouldn't seem to  
7 me that hard when you have 14-days' notice to do it.

8 MS. LEVINE: We certainly could go back to the  
9 Court if we have to go back to the Court, Your Honor. We  
10 don't see the harm in entering the stay now, though, to  
11 prevent that additional motion practice, which will cost  
12 everyone resources, you know, particularly if the stay is  
13 less than what we are asking for, but is just through the  
14 date of the District Court decision.

15 THE COURT: That's all you're going to get.

16 MS. LEVINE: You know, that --

17 THE COURT: You're not going to get any more than  
18 that, Ms. Levine. So I don't think you should worry about  
19 giving up anything on this point.

20 MS. LEVINE: I got that impression, Your Honor.

21 THE COURT: Okay.

22 MS. LEVINE: So, you know, what we're talking  
23 about balancing is, you know, that short amount of time,  
24 that short amount of delay, to ensure that the District  
25 Court is able to rule on the merits, which I think --

1 THE COURT: All right. So let me just ask Mr. --

2 MS. LEVINE: -- everybody agrees on this is  
3 something that should happen.

4 THE COURT: -- Mr. Kaminetzky. Your concern is  
5 really just if something happens that is unexpected, that  
6 delays Judge McMahon from ruling, right? I mean, that's  
7 really why you've put this earlier of District Court ruling  
8 or December 30, right?

9 MR. KAMINETZKY: Exactly. We did --

10 THE COURT: So --

11 MR. KAMINETZKY: -- I mean, again --

12 THE COURT: I mean, if that happens -- I mean, I  
13 don't what it would be. Maybe, you know... I don't know  
14 what happens. But I think what Ms. Levine is saying is why  
15 can't the Debtors come back to me and say it's a port for us  
16 to have the effective date go forward now?

17 MR. KAMINETZKY: The answer is, Your Honor, just  
18 that's not what the law is. The law --

19 THE COURT: Because it --

20 MR. KAMINETZKY: -- isn't that --

21 THE COURT: It would shift the burden. You're  
22 saying it would shift the burden.

23 MR. KAMINETZKY: It shifts the burden. Yeah, the  
24 burden is on them to show -- and I'm now quoting from the  
25 Calpine case, how it has to be neither remote nor

1 speculative, but actual and imminent. There is no harm.

2 THE COURT: Okay.

3 MR. KAMINETZKY: The only harm they've articulated  
4 is equitable mootness, and we've taken that off the table.  
5 They are not entitled to a stay. We've written it in blood  
6 seven or eight times that we've eliminated any risk to them.  
7 And if the unexpected happens, I'm fine with -- you know,  
8 December 15th they could file their new motion. We'll wait  
9 until December -- the earliest sentencing date is December  
10 31st, which means that the effective date -- the earliest  
11 one has to be seven days later. They have all the time in  
12 the world if the risk becomes actual and imminent. But it  
13 isn't, because we've agreed to take that off the table.

14 THE COURT: So when -- I'm just trying to figure  
15 out how the 14-days' notice of the effective date would tie  
16 into a December 30 sentencing date and a December 30 end  
17 date to the voluntary stay. When would you give that  
18 notice?

19 I guess you'd get -- can I interrupt you? I guess  
20 what you would do -- correct me if I'm wrong -- is you would  
21 fairly soon, I suppose, reach out to the District Court in  
22 New Jersey and say, can you give us a sentencing hearing  
23 sometime between December 30 and the next available date  
24 thereafter. Right? So you know when that would be? And  
25 then you would -- then you would --

1 MR. KAMINETZKY: Yes, Your Honor. We can't --

2 THE COURT: And then you would say in your --

3 MR. KAMINETZKY: We can't go --

4 THE COURT: Then you would say in your notice,  
5 we're giving you more than 14-days' notice. We're giving  
6 you a notice that we plan to go effective whatever date is  
7 after that sentencing hearing that you have to go effective?  
8 Or would it be the date of the sentencing hearing?

9 MR. KAMINETZKY: Well, it's both, Your Honor. We  
10 would give them notice of the sentencing hearing when it's  
11 scheduled. And obviously, it hasn't been scheduled yet.  
12 So, you know -- and Your Honor knows how busy District  
13 Courts are. So we'd give them immediate notice of that.  
14 They'll then know for sure that we can't go effective until  
15 after that date. The earliest is seven days after that date  
16 under the plan. And then they have plenty of notice of both  
17 the sentencing hearing, which won't happen overnight, as  
18 well as the effective date that will happen there after.

19 THE COURT: So is the sentencing hearing date,  
20 though, the key date, because the puzzle really does  
21 arguably change -- that's the missing piece of the puzzle as  
22 far as mootness is concerned? So really, the notice of the  
23 effective date is less important than the noticing of the  
24 sentence date?

25 MR. KAMINETZKY: Correct. And I mean, perhaps,



1       yes, maybe perhaps, but the answer is they're going to have  
2       plenty of notice of the sentencing date. And there's a  
3       reason we're not playing games, Your Honor. We're not ready  
4       to be sentenced yet. We still have work to do that's --

5               THE COURT: Right. Well, so --

6               MR. KAMINETZKY: -- you know, to get ready for  
7       this --

8               THE COURT: So I could require that you provide  
9       not only 14-days' notice of the actual effective date, but  
10      also 14-days' notice of the sentencing date.

11              MR. KAMINETZKY: I have no problem with that. I  
12      mean, again, it's in the District Court's discretion. But  
13      like --

14              THE COURT: No, I mean -- but I --

15              MR. KAMINETZKY: -- no problem here.

16              THE COURT: I'm assuming the District Court will  
17      give you at least 14-days' notice, right?

18              MR. KAMINETZKY: I certainly expect that to be the  
19      case. I think it would be quite -- in a public case like  
20      this, for a company like Purdue to be sentenced, I assume  
21      the District Court will give plenty of notice to everyone,  
22      including the public. So there's nothing happening here in  
23      secret. This isn't the type of, you know, equitable  
24      mootness that you're scared that wires will be sent out in  
25      the middle of the night. This is the most public events

1       that you could imagine is the sentencing of Purdue Pharma in  
2       a United States District Court.

3               And again, Your Honor, we're happy to -- I can  
4       repeat this -- we're all thinking -- you know, we all think  
5       that Judge McMahon, when she indicated in reading between  
6       the lines that she's going to rule quickly, so setting  
7       December 30th and January 7th is really not a problem. We  
8       just feel we need the protection of some outside date, just  
9       in case who knows what.

10              THE COURT:   Okay.   All right.

11              MR. KAMINETZKY:   And Your Honor, Ms. Levine came  
12       back to these, you know, mysterious other things that are  
13       happening.   But we've already dealt with those mysterious  
14       other things that are happening.   How many times does Your  
15       Honor have to rule that there's just simply no equitable  
16       mootness possibility there?   And again, we've stipulated it,  
17       and every plan proponent has stipulated that we will never,  
18       ever, ever make the argument that that would be to equitable  
19       mootness, any of those activities.

20              THE COURT:   Okay.   All right.   Does any other  
21       movant have anything to say on these points?   Any other stay  
22       movant?

23              MR. GOLD:   Your Honor, Matthew Gold.   Can you hear  
24       me?

25              THE COURT:   Yes.

1           MR. GOLD: Just a couple of brief observations,  
2       Your Honor. The first is it seems to me, given the  
3       construct of the Debtors' (indiscernible) that there would  
4       be no additional burden on the Debtor, and it would make  
5       perfect sense for them to provide us with substantially  
6       immediate notice a time when a request is made of the  
7       District Court for sentencing to occur, rather than saying  
8       send a date and -- I mean, if they're making a request to  
9       the District Court, they should be able to tell everyone  
10      that they have done so right then and there, or  
11      substantially (sound drops) thereafter, regardless of when  
12      that occurs.

13           The second thing is that I still find in the  
14      Debtors' proposal a subtle rewriting of Rule 8025, which  
15      Your Honor discussed earlier, which provides for a two-week  
16      stay following the ruling of the District Court, rather than  
17      --

18           THE COURT: That still applies. That still  
19      applies. This is just -- this just takes you up to the  
20      District Court ruling.

21           MR. GOLD: I understand. I just... It just  
22      seems, to us, cleanest when not creating confusion to say  
23      that whatever Your Honor grants would be coterminous with  
24      the stay that comes from under Rule 8025, rather than having  
25      to have anyone puzzle out what happens if one stay applies -

1 - ends earlier, and another stay does not.

2 THE COURT: Well, to me, the way to do that is to  
3 say it's... First of all, the Debtors are not proposing a  
4 stay here. They're proposing a stipulation that would  
5 obviate the need for a stay. And that at that point, you  
6 know, you have the District Court ruling. And then 8025  
7 comes into play.

8 MR. GOLD: Okay. Well, the Debtors' stipulation  
9 did not contain anything that said that it was not -- it was  
10 possible we were concerned in reading it that it might be  
11 intended to be a derogation of whatever rights --

12 THE COURT: No.

13 MR. GOLD: -- under 8025 --

14 THE COURT: I understand, but I don't --

15 MR. GOLD: -- and not --

16 THE COURT: Well, no one even mentioned 8025, but  
17 I understand that point. But I think that that would be  
18 clear from my ruling here.

19 MR. GOLD: Okay. And Your Honor, I mean, the only  
20 other thing which I will suggest is it's hard for me to  
21 believe that anyone wants to be deliberately setting a  
22 deadline that runs to New Years Eve, or immediately, giving  
23 a few days after that, if parties are going to be having to  
24 run in for emergency applications would make a certain  
25 amount of sense, given that the Debtors have conceded that a

1       few days here or there is not going to make a meaningful  
2       difference in this context.

3               Other than that, I have nothing to add on this  
4       point, Your Honor.

5               THE COURT:   Okay.

6               MR. GOLDMAN:   Your Honor, may I just add one  
7       additional point?   Irv Goldman, Pullman & Comley, for the  
8       State of Connecticut.

9               THE COURT:   Sure.

10              MR. GOLDMAN:   I think Your Honor hit directly on  
11       the head that the important date here, especially if the  
12       District Court has ruled by December 30, is the criminal  
13       sentencing date.   Although they've agreed to postpone asking  
14       for that to be held to December 30 or December 31, if it  
15       does actually fall on that date, I think it does make it --  
16       and this follows up on Mr. Gold's point -- somewhat of a  
17       difficulty in trying to get an emergency stay motion over  
18       the holiday season, running up to December 30th.   So I think  
19       it does, for that reason, make (sound drops) sense to have  
20       that pushed out so we're not running into the holidays.

21              THE COURT:   Well, I'm assuming you would make it -  
22       - you would file it and get a date a couple weeks before  
23       then.   But I understand the hearing time.   Understand that  
24       point, I don't think any court is particularly excited to  
25       have a hearing, although I think it would probably be

1 shorter than this one, on the New Year's Eve.

2 MR. GOLDMAN: Yes. That's all I had, Your Honor.

3 THE COURT: Okay. All right. Okay, so, look, I  
4 think obviously there is a lot more that the objectors want  
5 to get in the record for this hearing. But I do think that  
6 the Debtors' proposal, with some tweaking, really does make  
7 a lot of sense in the interim, particularly given Mr.  
8 DelConte's testimony that the money itself wouldn't be  
9 flowing even to the trusts until the beginning of 2022, and  
10 wouldn't thereafter, at least for a while, be going out --  
11 at least for a couple of weeks -- be going out to third  
12 parties in the form of the abatement payments. And probably  
13 a little bit longer for the personal injury claimants, which  
14 is the offsetting harm that the objectors have highlighted,  
15 and rightfully so.

16 So, why don't I throw out -- and people can be  
17 thinking about this while I hear the rest of the argument --  
18 that the Court's ruling would be to deny the stay request,  
19 on the conditions that the effective date not occur until  
20 the earlier of the issuance of the District Court's ruling  
21 and January 7th. That the Debtors will not seek a  
22 sentencing hearing to occur any earlier than January 7th,  
23 and that they will provide notice, not only of when that  
24 hearing is scheduled, but also their request for one to the  
25 Appellants. And that the movants may renew their stay

1 motion on at least 14-days' notice. And of course, that  
2 would also be accompanied by the stipulation that's been  
3 signed that the Appellees will not argue that any of the  
4 other actions that would be taken leading up to either the  
5 District Court ruling or January 7 would serve as a basis  
6 for equitable mootness.

7 So you all can mull that over, but I don't know if  
8 you want to go into additional argument, Mr. Kaminetzky, or  
9 does that conclude your argument? In which case, I'll hear  
10 from the other objectants. I think you're on mute still.

11 MR. KAMINETZKY: I am on mute. I have a double  
12 mute because I don't trust just one mute. But here's --  
13 well, Your Honor, we have -- if Your Honor wants me to  
14 address the longer stay, if that's still on the table, then  
15 I have a lot to say about that in terms of irreparable harm  
16 and the other prongs. If not, then I'll save that for,  
17 hopefully, never. But it's really up to you.

18 We do have a -- you know, we have a lot to say on  
19 the three-hour argument that the other side had on  
20 irreparable harm and the balances of harms and public policy  
21 and bond and all of that. So, Your Honor, I don't want to  
22 do something that you're not -- you don't want us to do, but  
23 we're happy to make that record or not make that record.

24 THE COURT: Well, unfortunately, where I know  
25 where I'm coming out, at least some of the movants, not all

1 of them, really are, I think, still actively pursuing as an  
2 alternative the stay through the conclusion of the appellate  
3 process. So I think we should, albeit maybe so as to  
4 preserve the record, at least get in the witness  
5 declarations and hear brief argument on the irreparable harm  
6 and balance of the harms and public policy points for, or  
7 with respect to, movants' request for a stay beyond the  
8 dates that I have posited, which again would be the earlier  
9 to occur of the District Court's ruling and January 7th,  
10 although that wouldn't be a stay. That would be a denial of  
11 the motion on the conditions that these agreements be made  
12 by the Appellees.

13 MR. WAGNER: Your Honor, Jonathan Wagner, from  
14 Kramer Levin, on the issue of the declarants -- on behalf of  
15 the Ad Hoc Committee. Our declarant, Mr. Guard, has to  
16 leave by 4:00 --

17 THE COURT: Okay.

18 MR. WAGNER: -- to pick up his son.

19 THE COURT: Okay.

20 MR. WAGNER: So can we swear him in now and have  
21 him attest to his declaration?

22 THE COURT: Yes, that's fine.

23 MR. WAGNER: That's fine.

24 THE COURT: And I see him there on the screen.

25 So, Mr. Guard, would you raise your right hand, please? Do



1       you swear or affirm to tell the truth, the whole truth, and  
2       nothing but the truth, so help you God?

3               MR. GUARD:   I do.

4               THE COURT:   Thank you.   And it's John M. G-U-A-R-  
5       D?

6               MR. GUARD:   Yes, sir.

7               THE COURT:   Okay.   So, Mr. Guard, you submitted a  
8       declaration intended to be your direct testimony on these  
9       motions for stay pending appeal.   It's dated October 22,  
10      2021.   Knowing again that it would be your direct testimony,  
11      is there anything in it sitting here on November 9 that you  
12      want to change?

13              MR. GUARD:   No, Your Honor.

14              THE COURT:   Okay.   Does anyone want to cross-  
15      examine Mr. Guard?   Okay.   I have reviewed Mr. Guard's  
16      declaration.   I believe it's quite clear.   I have, in part,  
17      limited it, as I ruled in my colloquy with Mr. Goldman, in  
18      light of Connecticut and Washington's objection to its  
19      admissibility.   But otherwise, I'll admit it now.   It's just  
20      direct testimony.   So, you can sign off, Mr. Guard.

21              MR. GUARD:   Thank you, Your Honor.

22              THE COURT:   Okay.

23                      (Declaration of John M. Guard Admitted Into  
24      Evidence)

25              THE COURT:   I think other objectors also submitted

1        declarations that they may want to move the admission of  
2        now. Mr. Jorgensen and the Committee's two witnesses, Ms.  
3        Juaire and Ms. Trainor.

4                MR. HURLEY: Your Honor, if I may, it's Mitch  
5        Hurley, on behalf of the Official Committee of Unsecured  
6        Creditors.

7                THE COURT: Okay.

8                MR. HURLEY: Your Honor, my colleague, Arik Preis,  
9        is going to argue the objection to the stay motion on behalf  
10       of the UCC. I'm taking the virtual podium here only to  
11       offer into evidence the declarations of Ms. Juaire and Ms.  
12       Trainor.

13               Both witnesses are members of the UCC, who have  
14       dedicated countless uncompensated hours to these cases.  
15       Both agreed during the course of the cases to cease their  
16       ordinarily outspoken public advocacy relating to Purdue.  
17       Both have suffered unthinkable personal loss as a result of  
18       the opioid epidemic. And both have responded by devoting  
19       virtually all of their time helping others (indiscernible)  
20       community.

21               As such, the ICC submits these witnesses have  
22       unique knowledge and insights in matters of great relevance  
23       to the exercise the Court is undertaking on the stay motion,  
24       and that those insights should be a part of the record.

25               The states of Washington and Connecticut were

1 alone in objecting to admission of the declarations of Ms.  
2 Juaire and Ms. Trainor, and then only with respect to  
3 several discrete statements included in those declarations.

4 My understanding is that the Court already has  
5 overruled the objections of Washington and Connecticut, as  
6 explained in more detail by the Court earlier in these  
7 proceedings today. And I therefore will not address further  
8 those objections, unless Your Honor has questions for me.  
9 And both of the witnesses are present and available to  
10 affirm their declarations, if Your Honor wishes.

11 THE COURT: Just to be clear, I didn't completely  
12 overrule the two states' objections. I granted them to the  
13 extent that I found that each declarant was predicting or  
14 offering a rationale for the exact effect of the delay of  
15 payments under the plan and/or stating their belief as to  
16 why certain sources of abatement have shut down over the  
17 last several months.

18 I admit them for predictions by a reasonably  
19 informed person who has dedicated, as you said,  
20 substantially all of their time to these types of issues,  
21 and who have in each case involved them to a significant  
22 degree in understanding and interacting with others like  
23 them, who have devoted themselves as well to abatement of  
24 the opioid crisis.

25 So, why don't we start with Ms. Juaire? She can

1 go on the screen. Okay. Would you raise your right hand,  
2 please? Do you swear or affirm to tell the truth, the whole  
3 truth, and nothing but the truth, so help you God?

4 MS. JUAIRE: I do.

5 THE COURT: And it's Cheryl, C-H-E-R-Y-L, Juaire,  
6 J-U-A-I-R-E?

7 MS. JUAIRE: Yes.

8 THE COURT: Okay. Ms. Juaire, you submitted a  
9 declaration in connections with these motions for a stay  
10 pending appeal that was intended to be your direct  
11 testimony. It's dated October 21, 2021. Sitting here today  
12 on November 9, is there anything in it that you would wish  
13 to change?

14 MS. JUAIRE: No.

15 THE COURT: Okay. Does anyone want to cross-  
16 examine Ms. Juaire? Okay.

17 I have read the declaration and I don't have any  
18 questions on it. It's quite clear to me, and I will admit  
19 it as Ms. Juaire's direct testimony subject to the  
20 limitation on admission that I previously articulated.

21 So thank you, Ms. Juaire, and you can sign off at  
22 this point.

23 MS. JUAIRE: Thank you.

24 THE COURT: Okay. And then can we bring Ms.  
25 Trainor on the screen? Good afternoon. Would you raise

1     your right hand, please? Do you swear or affirm to tell the  
2     truth, the whole truth, and nothing but the truth, so help  
3     you God?

4             MS. TRAINOR: I do.

5             THE COURT: Okay. And it's K-A-R-A T-R-A-I-N-O-R?

6             MS. TRAINOR: Yes.

7             THE COURT: And Ms. Trainor, you submitted a  
8     declaration in connection with this set of motions for a  
9     stay pending appeal. It's dated October 21, 2021, and it's  
10    intended to be your direct testimony.

11            Sitting here today on November 9, is there  
12    anything in it that you wish to change?

13            MS. TRAINOR: No.

14            THE COURT: Okay. Does anyone want to cross-  
15    examine Ms. Trainor on her declaration? Okay.

16            And again, I've reviewed it and I found it to be  
17    quite clear and subject to the limitation on admissibility  
18    that I previously noted, I will admit it as Ms. Trainor's  
19    direct testimony. I don't have any questions of her, so  
20    thank you and you can sign off, ma'am.

21            MS. TRAINOR: Thank you.

22            THE COURT: Okay.

23            MAN 1: Thank you, Your Honor.

24            THE COURT: Okay. I think there were two other  
25    declarations, one by Mr. Jorgensen and then one that came

1 out very recently, which may or may not be necessary given  
2 my ruling on the objections to admissibility by the State of  
3 Connecticut and the State of Washington, but I think that's  
4 Mr. Jorgensen. And a declaration by another official from  
5 Arkansas, which I'm looking for and can't find at the moment  
6 -- here it is, I have it -- Mr. Lane.

7 MR. LIESEMER: Yes, Your Honor. This is Jeffrey  
8 Liesemer on behalf of the multi-state governmental entities  
9 group. We had filed the declaration of Mr. Jorgensen, and  
10 if we could proceed, I can see if we can bring him up.

11 THE COURT: Yes. If you could pull him on the  
12 screen, that'd be fine.

13 MR. LIESEMER: And while we are waiting for Mr.  
14 Jorgensen to appear, I just did want to remind Your Honor  
15 that Washington and Connecticut had raised certain  
16 evidentiary objections to the declaration of Mr. Jorgensen,  
17 similar to the other declarants.

18 And we filed the declaration of Mr. Kirk Lane  
19 yesterday to respond to the narrow point that was raised by  
20 the two states, and Mr. Lane's declaration is at Docket  
21 4075.

22 THE COURT: Okay, right. I have it here now.  
23 Okay. I see Mr. Jorgensen now. Would you raise your right  
24 hand, please? Do you swear or affirm to tell the truth, the  
25 whole truth, and nothing but the truth, so help you God?

1 MR. JORGENSEN: I do.

2 THE COURT: And it's Colin, C-O-L-I-N, Jorgensen,  
3 J-O-R-G-E-N-S-E-N?

4 MR. JORGENSEN: Yes, Your Honor.

5 THE COURT: Okay. So, Mr. Jorgensen, you  
6 submitted in connection with the motions for stay pending  
7 appeal. It's dated October 20, 2021. It's intended to be  
8 your direct testimony in support of the multi-state  
9 governmental entities group in opposition to those motions.

10 Knowing that and sitting here today on November  
11 9th, is there anything in it that you would wish to change?

12 MR. JORGENSEN: One thing, Your Honor, an update.

13 THE COURT: Okay.

14 MR. JORGENSEN: In Paragraph 12 on Page 5-6 of my  
15 affidavit, I cite the number 515 drug overdose deaths in  
16 Arkansas for 2020.

17 THE COURT: Right.

18 MR. JORGENSEN: And since I wrote and signed the  
19 declaration, I've learned that the updated final number is  
20 547 overdose deaths in Arkansas in 2020.

21 THE COURT: Okay.

22 MR. JORGENSEN: I can source that for you if you  
23 want.

24 THE COURT: I think you should do that for you,  
25 yes.

1 MR. JORGENSEN: Okay. So I found that number on  
2 the Arkansas Drug Director's website, which is  
3 artakeback.org. There's a news button you can push. And  
4 when you go into that, it's the most recent post on the  
5 website is from October 28th, just less than two weeks ago,  
6 and that article, the last sentence in that articles cites  
7 the number 547 drug overdose deaths in Arkansas in 2020.

8 When I saw that, I knew that must mean they have  
9 arrived at a final number, and I reached out to Kirk Lane,  
10 who is the Arkansas Drug Director, and I asked him to source  
11 that for me. And he sent me several reports from the  
12 Arkansas Department of Health, which maintains these final  
13 numbers and death certificates and things.

14 And I reviewed the reports and saw that they  
15 consistently all cited the number 547 as the number for  
16 overdose deaths in Arkansas in 2020.

17 THE COURT: Okay.

18 MR. JORGENSEN: It doesn't change much in  
19 substance for my affidavit. It's just the more accurate  
20 number now with that update.

21 THE COURT: Okay, thank you. Does anyone want to  
22 cross-examine Mr. Jorgensen on his declaration? Okay.

23 Again, I've reviewed his declaration carefully.  
24 It, like other declarations that I've already admitted into  
25 evidence, cites the CDC estimates for drug overdose deaths



1 in 2020, and also as we've just heard, focuses on the State  
2 of Arkansas for that sad statistic.

3 I will admit Mr. Jorgensen's declaration, subject  
4 to admitting Mr. Lane's declaration, and the limitations  
5 generally as to any assumptions as to other parties' actions  
6 that would derive from third parties as being only Mr.  
7 Jorgensen's analysis or prediction.

8 But I will note that his task here, I believe,  
9 qualifies him to make such predictions and analyses, given  
10 his role on behalf of the AAC; that is the Association of  
11 Arkansas Counties.

12 So you can sign off Mr. Jorgensen.

13 MR. JORGENSEN: Thank you, Your Honor.

14 THE COURT: Okay. And then can we pull up Mr.  
15 Lane?

16 MR. LIESEMER: Your Honor, Mr. Lane's declaration  
17 goes to a very narrow point. Washington and Connecticut had  
18 asserted that the document that is attached to Mr.  
19 Jorgensen's declaration as Exhibit 1 did not fall under the  
20 public records exception to the rule against hearsay. We  
21 provide Mr. Lane's declaration to give assurance that it  
22 does meet the public records exception. And so, he's not  
23 speaking to any of the four prongs regarding the motion to  
24 stay, so it's a very narrow point.

25 If Your Honor does not need Mr. Lane's declaration

1 to admit all of Mr. Jorgensen's declaration, including the  
2 exhibit, then I think we can dispense with that. We do not,  
3 because of the narrow issue, we do not have Mr. Lane on  
4 standby.

5 THE COURT: Okay. All right, well, let me ask Mr.  
6 Goldman and Mr. Gold. Having seen Mr. Lane's declaration,  
7 would you still challenge the admission of the report that's  
8 attached as Exhibit 1 to his declaration, the Naloxone Saves  
9 Program report?

10 MR. GOLDMAN: Your Honor, Irv Goldman. No, no  
11 objection.

12 THE COURT: So I will admit Mr. Lane's declaration  
13 for that purpose.

14 Okay. I think those are all the witnesses, so I'm  
15 happy to go back now for brief oral argument by the  
16 objectants, although again, I've reviewed the pleadings.

17 MR. LIESEMER: Your Honor, I'll just be very brief  
18 and turn it over then to the other plan proponent objectors.

19 Let me just say two things: one is with respect  
20 to, you know, your tentative rulings or what have you.  
21 That's all fine, except for -- I'm just a civil litigator  
22 that plays in Bankruptcy Court from time to time.

23 I am told that Your Honor's suggestion or  
24 requirement that we provide notice of even a request for  
25 sentencing, that is something that perhaps we should not

1 agree to, given that this is an agreement between the U.S.  
2 Attorney's Office and the Debtors, and we're not sure how  
3 the U.S. Attorney's Office would feel about that; number  
4 one.

5 Number two. If we're talking about just a request  
6 for sentencing and not the sentencing date itself, we'll be  
7 getting in front of the U.S. District Court. I mean, if  
8 we're calling up the clerk of the court and asking for a  
9 sentencing date and that somehow triggers a requirement to  
10 tell the world that we've done so, that seems like kind of  
11 stepping on the toes of the New Jersey District Court.

12 And finally and most importantly, Your Honor, is  
13 I'm told that the sentencing schedule is going to be  
14 scheduled plenty in advance of any hearing, reporting  
15 likely, you know, 30-45 days. I can't guarantee because I  
16 don't have the judge's calendar. But this again isn't  
17 something that happens overnight; this is something that the  
18 public is going to be invited to.

19 So we believe that, you know, giving notice as  
20 soon as it's scheduled will give plenty of time for anyone  
21 to do whatever they feel they need to do to protect their  
22 rights.

23 THE COURT: Okay.

24 MR. LIESEMER: And then on the balance of harms,  
25 we'll rely on Mr. DelConte's declaration and the extensive

1 discussion of the cataclysmic harms that could occur to the  
2 Debtors should this thing delay the -- should confirmation  
3 be -- sorry -- emergence be delayed for any significant  
4 period of time.

5 But I will turn it over to the various creditors'  
6 group to make the principal argument with respect to the  
7 balance of harm, the public interest, as well as the bond  
8 issue.

9 THE COURT: Okay.

10 MR. PREIS: Good afternoon, Your Honor. This is  
11 Arik Preis from Akin Gump Strauss Hauer & Feld on behalf of  
12 the Official Committee. Can you hear me? Are there any  
13 issues?

14 THE COURT: I can hear you and see you fine.

15 MR. PREIS: Okay.

16 THE COURT: Although you seem to be inside a  
17 filing cabinet. I don't know, it looks -- I'm worried for  
18 you, but that's okay. Now I see you're in a conference  
19 room.

20 MR. PREIS: So I want to do this, if it's okay, I  
21 want to address my oral argument first and then, hopefully,  
22 that will inform my response to your proposal from a little  
23 while ago about how you would propose resolving the issue  
24 through a stipulation.

25 Can I proceed in that manner?

1 THE COURT: Sure.

2 MR. PREIS: Okay. And I'm going to, if I've  
3 hesitated, it's because I want to try to speak through some  
4 things, and so, it may take me a second to (sound glitch)  
5 over.

6 In general, obviously, the Official Committee  
7 vehemently opposed the movant's request. We actually spent  
8 quite a bit of time with them trying to avoid this hearing  
9 because we thought the offer we gave them gave them the  
10 functional (sound glitch) of what they were asking.

11 They insisted on having the hearing. And lest any  
12 of us forget, I won't belabor this, but during the course of  
13 this hearing, approximately 30 people have died due to  
14 opioid overdose. But notwithstanding our views regarding,  
15 you know, the impropriety of this hearing, we must do what  
16 we can to protect the interests of the 630,000 claimants who  
17 are waiting to receive their money, that roughly 96 percent  
18 of voting claimants who voted in support of the plan and  
19 then 10 ad hoc groups who all expressed support and objected  
20 to the stay motion.

21 So I'm going to pensively just address harm to the  
22 movants and then the public interest.

23 On harm to the movants, I'm not going to address  
24 equitable mootness; you addressed that already. The only  
25 real other argument that the movants made is that the three

1 state attorney generals argue that if a stay is not granted,  
2 their ability to enforce their police power will be  
3 irreparably harmed.

4 That's misguided for two reasons. First, it needs  
5 to be repeated that there's absolutely nothing, has been  
6 nothing, and will never be anything that stops anyone from  
7 criminally prosecuting any of the Debtors receiving the  
8 relief. Attorneys general and those that can bring the  
9 criminal prosecution has had this (sound glitch) for more  
10 than -- forever, and they've been investigating the Sacklers  
11 for more than three years, and they had the right to gain  
12 access to every piece of evidence the UCC and the NCSP  
13 uncovered in one of the most thorough investigations ever in  
14 the history of bankruptcy. If they thought they had a  
15 viable criminal case, they would have brought.

16 Instead, they've gone out of their way to confuse  
17 people, including their citizens, by blaming Your Honor for  
18 issuing an order that gives permanent immunity to the  
19 Sacklers, which they therefore cry -- used to cry  
20 irreparable harm.

21 General Tong ordered on September 20th that the  
22 Bankruptcy Court's ruling let the Sacklers off the hook by  
23 affording them permanent immunity from lawsuit that would  
24 hold them accountable for the damage they've caused.

25 General Ferguson in Washington ordered on

1 September 2nd, the confirmation order let the Sacklers off  
2 the hook by granting them permanent immunity from lawsuits  
3 in exchange for (sound glitch) profits they made from the  
4 opioid epidemic.

5 In fact, they well know that this is the  
6 creditors' plan. If the states and municipalities that  
7 drives the public (sound glitch), the NAS, the third-party  
8 payers, the ratepayers, the hospitals who all overwhelmingly  
9 voted in favor of the plan. They know this, but it's easier  
10 for them to blame Your Honor and this Court.

11 Second, it cannot be the case that these three  
12 AGs' ability to enforce (sound glitch) is irreparably  
13 harmed, while the ability of no other attorney general  
14 across the United States is similarly harmed. Indeed, we  
15 actually are forgetting that there are five other state  
16 attorneys generals who are vigorously appealing the  
17 confirmation order and the District of Columbia which have  
18 not joined in the request for a stay. They all looked at  
19 the facts and circumstances of the case and determined  
20 there's no irreparable harm to the citizens of their state  
21 if the plan is permitted to be effective without a stay.

22 Said another way, 94 percent of the AGs  
23 representing 95 percent of the population chose to follow  
24 the whim of 96 percent of the voters. So why is every  
25 single creditor, other than three AGs, not seeking an

1 extraordinary remedy of a stay? Obviously, the answer is  
2 the irreparable harm.

3 A lot has been written about this. Your Honor  
4 said you read the papers. I'm not going to belabor some of  
5 this, but I just want to note a few things.

6 You mentioned the CDC estimates. You mentioned  
7 how they've gone up in the past year. The simple answer is  
8 they're losing the fight in the opioid epidemic. But the  
9 daily deaths, approximately 204, are opioid (sound glitch).

10 There are currently more than 1.6 million  
11 Americans estimated to be suffering from OUD. By some  
12 estimates, the annual cost of dealing with the opioid  
13 epidemic is \$78 billion. Each day that funds are held back,  
14 there are real-world and life-and-death consequences.  
15 Abatement programs go unfunded, overdose reversal medicine  
16 does not get distributed, community centers are not (sound  
17 glitch). I could go on and on and on.

18 The point is, as Your Honor said earlier, every  
19 day and every dollar makes a difference.

20 The three AGs and the U.S. Trustee are unswayed.  
21 They give three responses. First, they argue that they're  
22 working hard to get their appeals heard quickly, so a little  
23 delay is tolerable. Second, they argue that the cases have  
24 been delayed for two years by the UCC, among others, and  
25 therefore, a few more months isn't going to matter in the



1 big picture or a few days. They argue the new National  
2 Opioid Settlement that's bringing in lots of money, and  
3 therefore, not getting money from the Sacklers isn't as bad  
4 as it may seem.

5 These are dangerous arguments. Let's start with  
6 the first one. No delay is tolerable.

7 The attorney general from the State of Missouri  
8 recently stated that the number of opioid overdose deaths is  
9 like a plane going down every day, a month, a year. As Miss  
10 Juaire and Miss Trainor explained in their declarations,  
11 they see the devastation every day.

12 Indeed, our office has fielded more than 500  
13 calls, letters, and emails from victims over the past two  
14 years and returned each one. We've listened to their  
15 stories, we've grieved with them, we've attempted to explain  
16 the injustice being done.

17 Indeed, yesterday, just as an example, I took a  
18 call from Robert Bernhoff, a resident of the State of  
19 Washington, who was in a 2009 ski accident, was prescribed  
20 Oxi and was on it for three years and it changed and ruined  
21 his life. Now why do I mention him? It turns out he was a  
22 fifth grade teacher in 2006 for Attorney General Ferguson's  
23 niece, and he asked that I note his unhappiness and the  
24 State of Washington's attempt to (sound glitch) distribution  
25 of funds.

1           If the U.S. Trustee and the attorney generals get  
2       their wish and we're stayed for even six months, and  
3       assuming that that's all it is, there will be 36,000 more  
4       deaths; that's 1 percent of the population of the State of  
5       Connecticut.

6           As Mr. Guard said in his declaration, it's  
7       unconscionable that the remote chance that some (sound  
8       glitch) creditor could recover some money from the Sacklers  
9       on some distant day or that some known creditors could  
10      receive additional money after years of litigation could  
11      justify the additional death of a single American; Paragraph  
12      14 of his declaration.

13          The second argument that the movants make is that  
14      the case has already been delayed for two years by the UCC,  
15      among others, and therefore, incremental delay should be on  
16      us and shouldn't be a big deal. We don't believe those  
17      arguments even merit a response, but I just want to point  
18      out a few things.

19          First, the UCC has done virtually everything in  
20      its power since the day it was appointed to move (sound  
21      glitch) out for abatement and victim compensation. We all  
22      know what happened with the ERF. We saw the potential that  
23      this looks to be a long case, and we tried very hard to get  
24      money out to community organizations two years ago.

25          Everyone knows, now in hindsight, look at how

1 important that money could have been if the DOJ, among  
2 others, was one of the biggest opponents to the ERF.

3 Second, I won't go through everything that's  
4 happened over the course of the last two years. But to be  
5 clear, there was six months of mediation, of which three  
6 months was just public and public negotiations and three  
7 months of public and private negotiations, six months of  
8 mediation with the Sacklers, another three or four months to  
9 document the deal, and the elongated confirmation hearing.

10 All that has occurred with the movants sitting  
11 there and watching and being part of every little piece of  
12 it. I'm not criticizing them, but they couldn't say that  
13 the past two years, because the case has lasted two years,  
14 that in some way that another few days isn't going to make a  
15 difference.

16 The movants' third rationale, and admittedly only  
17 Generals Tong and Ferguson make this harmfully misleading  
18 argument, is that there's money from other sources coming  
19 in, and so the Purdue money -- not getting the Purdue money  
20 now is tolerable. Specifically, AGs Tong and Ferguson  
21 trumpet the National Opioid Settlement with three  
22 distributors and Johnson & Johnson, 26 billion over 15  
23 years. Without a doubt, the UCC applauds these efforts,  
24 although ironically, the State of Washington hasn't agreed  
25 to it.

1 But what the AGs don't say in their papers, and  
2 indeed, they haven't said publicly in anything we can find,  
3 is that not one dollar of the 26 billion goes to private  
4 side claimants. That's not an accident.

5 But why am I raising that here? Washington and  
6 Connecticut makes such a big deal about the NOS in their  
7 papers, and they say that the money is coming in, but they  
8 don't say that 1.4 billion of the Purdue money goes to  
9 claimants who are getting zero from the National Opioid  
10 Settlement. It's something they don't want to admit.

11 Moreover, it's just innate to say that an (sound  
12 glitch) claimant because they're getting money from the NOS  
13 and tolerate some delay in getting the Purdue money. The  
14 cost of the opioid crisis is \$78 billion a year.

15 As Your Honor said on August 23rd and during the  
16 confirmation hearing, it just seems really boneheaded to say  
17 this 4.25 billion won't pay off from all the opioid (sound  
18 glitch), you shouldn't take it.

19 With that, Your Honor, I'll turn to the public  
20 interest program.

21 The U.S. Trustee states that the co-op with the  
22 U.S. Trustee and the public interest are, "one in the same"  
23 because the government's interest is the public interest.  
24 The U.S. Trustee further states that when the government is  
25 the movant, the public interest and irreparable injury fact

1 (sound glitch), despite through a number of cases for that  
2 proposition.

3 Let me respond in four ways. First, not one case  
4 that the U.S. Trustee cite stands for the proposition that  
5 when the U.S. Trustee is the movant that the federal  
6 government's interest is the one being implicated for  
7 confirmation over (sound glitch).

8 Knowing this, in its appellate papers, the U.S.  
9 Trustee has started referring to itself as the government,  
10 as opposed to the Office of the United States Trustee.  
11 We're not disputing that the U.S. Trustee's website says  
12 that it's a component arm of the DOJ. But perhaps the U.S.  
13 Trustee has not cited any cases where the U.S. -- because  
14 the U.S. Trustee is never a creditor. And therefore, it's  
15 role as a so-called (indiscernible) doesn't merit its  
16 interest being equated with the public for the purpose of  
17 this analysis.

18 In other words, no one with the (sound glitch) to  
19 say that such an extraordinary remedy that should only be  
20 granted in the most narrow of circumstances. Perhaps courts  
21 should be wary of holding up the will of actual creditors  
22 for the desires of a non-creditor.

23 Second, under the facts and circumstances of this  
24 case in particular, it's inexplicable that the U.S. Trustee  
25 is taking the position that its interest are those of the

1 government. To be clear, there are other federal government  
2 interests in this case, and not one of them has brought a  
3 motion for a stay pending appeal.

4 Even the DOJ, who is unimaginably -- imaginably  
5 filed amicus briefs all but appealing the confirmation order  
6 and objecting to confirmation has not asked (sound glitch)  
7 pending appeal. The DOJ settled its civil claims for 225  
8 million. They settled their criminal claims for 225  
9 million. They settled their unsecured claims for 65  
10 million. The various governmental agencies settled their  
11 issues with Purdue and other private side claimants and  
12 public side claimants by taking 4 percent of the amount that  
13 was going to go to PIs and taking and transferring it to  
14 themselves.

15 So the case where every governmental entity that  
16 is a creditor has already settled with Purdue and the  
17 Sacklers and the other plaintiffs is either getting money on  
18 the effective date or has already received such money. It's  
19 pretty difficult to believe that the U.S. Trustee, which is  
20 not a creditor, nor does it act in any interest other than  
21 what it perceives to be others' interest, to take the  
22 position its acting as the government.

23 Third, (sound glitch) for one moment that the U.S.  
24 Trustee could credibly argue that their interests are those  
25 of the government. In that instance, the question is, is

1 the government's interest really coterminous with the public  
2 interest in this case. Let's consider the following  
3 factors.

4 First, between 2008 and 2017, the Sackler's family  
5 took approximately 11 billion out (sound glitch). Of this  
6 amount, 4 billion went straight to the federal government in  
7 the form of taxes. That makes the federal government not  
8 only the biggest recipient of Sackler money in the last 13  
9 years, but the transferee of an alleged fraudulent  
10 conveyance. Yet, the federal government has not once  
11 offered to make this money available for opioid abatement  
12 for victims of (sound glitch).

13 Second, the DOJ settled their civil differences  
14 with the Sackler family in 2020 in return for a cash payment  
15 of 225 million. They received the money. They refused to  
16 agree that the money would be earmarked for opioid abatement  
17 and compensation or in ERF.

18 Third, they settled their criminal claims against  
19 Purdue in 2020 in return for 225 million and an unsecured  
20 claim of 25 million. Unlike every single other opioid  
21 claimant in the case under the plan, the DOJ refused to  
22 agree that their money would be used for abatement or victim  
23 compensation.

24 Fourth, in 2007, in return they received -- they  
25 settled their differences with Purdue in return for 634

1 million, none of which was earmarked for abatement or victim  
2 compensation, and Purdue's agreement to comply with the CIA  
3 for five years. The terms of the CIA are publicly  
4 available. To be clear, Purdue was required to maintain a  
5 reporting to the federal government. During those five  
6 years, Purdue generated the most money they did and took out  
7 the most money out of Purdue during the 2008 to 2012 period.

8 Yet, after all public and private companies, they  
9 were done with mediation, the federal government, through  
10 its agency, entered to negotiate and demanded and took 25  
11 million for personal injury claim and transferred that to  
12 federal agencies. The DOJ's settlement with Purdue contains  
13 a clause (sound glitch) under certain conditions, one of  
14 which will occur if the U.S. Trustee prevails in its appeal,  
15 the DOJ (sound glitch) a \$2 billion priority claim ahead of  
16 all the other opioid claimants.

17 So again, not only if their appeal wins do the  
18 claimants not get anything, but the DOJ takes all of it.  
19 (sound glitch) negotiations of the ERF, the DOJ argued  
20 vigorously against the ERF. During the UCC's investigation  
21 of the Sacklers, the DOJ refused to insert itself on the  
22 claims (sound glitch) in any discovery dispute regarding the  
23 documents uncovered in the DOJ's investigation.

24 In other words, when given the chance to help the  
25 public by joining forces with the UCC and the (sound



1 glitch), the DOJ didn't do anything.

2 And perhaps most egregiously, the U.S. Trustee  
3 argues that the due process rights of PIs have been violated  
4 because of the imposition of the non-consenting third-party  
5 releases. Unbelievably, the U.S. Trustee went out and tried  
6 to recruit personal injury victims who will join their  
7 brief; apparently, their first foray into speaking to  
8 personal injury victims in this case.

9 Yet, nowhere in their papers did they explain the  
10 reality that if they are successful in their appeal, it's  
11 almost certain that every single one of the Debtors' 140,000  
12 personal injury victims will receive close to zero, if not  
13 zero, in their own litigation.

14 Fourth, the Official Committee contends the public  
15 interest in this case overwhelmingly supports denying the  
16 stay for the reasons of the irreparable harm that I  
17 mentioned earlier, the overwhelming support of the voters,  
18 the overwhelming support of the ad hoc group.

19 Indeed, I think it's fair to say that there's  
20 never been a case where the public interest is so  
21 overwhelmingly opposed to the (sound drops).

22 Your Honor, with that, I'd like to address the  
23 proposal that you made about 15 minutes ago.

24 THE COURT: Okay.

25 MR. PREIS: If I understood your proposal earlier,

1 Your Honor said that it'll be -- a condition to the  
2 effective date is that it will be the earlier of January 7th  
3 and the District Court ruling; is that correct? Do I have  
4 that right?

5 THE COURT: Well, first, I have not -- this  
6 proposal does not contemplate the entry of a stay. What it  
7 contemplates is the denial of the stay motions without  
8 prejudice to the future right to bring them on the  
9 conditions of the denial and that it lays out the  
10 conditions.

11 And the first condition is, in fact, that the  
12 appellees would agree that the effective date would not  
13 occur until the District Court's ruling and January 7.

14 MR. PREIS: So if I understand that correctly and  
15 if the Debtors are not permitted to seek a sentencing  
16 hearing earlier than January 7th, which was I believe  
17 another condition, then it's possible if, as we all heard  
18 Judge McMahon say that she -- you know, she has a trial  
19 coming up on December 7th, and we kind of read between the  
20 lines that Her Honor may rule before that.

21 Then between, let's call it December 7th and  
22 January 7th -- now actually, it's really January 14th  
23 because we can't go into (sound glitch) until seven days  
24 after the criminal sentencing, you would be delaying (sound  
25 glitch), but because by those terms. Is that correct? I

1 want to understand if that's what you meant.

2 THE COURT: Well, yes, correct. And that's  
3 primarily to give the movants the opportunity to renew their  
4 motion.

5 MR. PREIS: Again, (sound glitch) that will be 37  
6 days -- I'm sorry -- 30 days, 37 because (crosstalk).

7 THE COURT: Well, except that under Rule 8025,  
8 unless Judge McMahon shortened it, there would be 14 days  
9 added on to the December 7th date, so you'd be at December  
10 21.

11 MR. PREIS: Right. Which is I think why in the  
12 original proposal, we get offered December 20th, which I  
13 understand was not December 21. The only reason I'm raising  
14 this is because part of our argument, the irreparable harm  
15 (sound glitch). And I know Mr. Kaminetzky said, you know,  
16 being December 20th to December 30th is okay. And then, you  
17 know, there was some discussion about the holidays, so let's  
18 move it to January 7.

19 In effect, we've now elongated almost more than  
20 half a month before -- if it turns out that Judge McMahon  
21 actually rules by December 7 and we're able to get a  
22 sentencing hearing by December 20th, we will move their  
23 effective date by 17 or 18 days at the very least. And  
24 again, from our perspective, every day matters.

25 THE COURT: Well, except -- let me address that

1 because, again, I fully accept that there is almost  
2 immeasurable harm in not getting the plan distributions to  
3 PI claimants and to the state and governmental entities for  
4 the purpose of abatement, and the other entities, the Indian  
5 tribes and the hospitals and the like.

6 But based on my understanding of the plan and Mr.  
7 DelConte's testimony, the money wouldn't actually go to them  
8 until sometime after the effective date and probably weeks  
9 after the effective date.

10 So I think that the real issue where the balancing  
11 of the harms comes into play or the real time comes into  
12 play is where the movants would seek a stay after the  
13 District Court's ruling, pending appeal to the Second  
14 Circuit.

15 MR. PREIS: I don't dispute your reading of Mr.  
16 DelConte's declaration. But isn't what all you've done is  
17 just move the same period back (sound glitch).

18 THE COURT: I did. I moved it a week from the end  
19 of the year to January 7th, and that's basically because --  
20 or arguably two weeks from December 21 to January 7, and  
21 that's basically because I have some concerns about imposing  
22 a hearing date on Judge McMahon around New Year's Eve or  
23 around the Christmas holiday, so that's the only reason.

24 And it didn't seem to me, given the testimony,  
25 that the delivery of the distributions beyond the trusts

1 would happen any slower because of that.

2 MR. PREIS: I'm sorry, that wasn't my point. I'm  
3 sorry.

4 What I was trying to say is if all you've done is  
5 move the initial distribution date back from December 21 to  
6 January 14th or whatever it is, then that same period,  
7 between the time the money first goes to the trust and the  
8 money goes out, that same increment just gets added whenever  
9 the money first goes out (sound glitch).

10 So that delay, that lag from the time the money  
11 goes to the trust to the time it actually goes out, that  
12 occurs no matter when the money (sound glitch) mid-January,  
13 then you have a delay of (sound drops).

14 So the fact that there's -- you understand what  
15 I'm saying or am I not making myself clear?

16 THE COURT: No, I do. I understand. For example,  
17 the 14 days for the states to deliver their final NOAT  
18 allocation would start running from the effective date,  
19 which would be those 14 days later. I do see that.

20 MR. PREIS: Yes, that was my point. And that's  
21 why when I said every day mattered, so it is actually by  
22 moving everything back 17 days, it has a real effect. So  
23 anyways, that was my first point.

24 My second point is --

25 THE COURT: Well, could I interrupt you for a

1 second? I guess for mootness purposes, it doesn't really  
2 help to change it to the distribution date, as opposed to  
3 the effective date because the effective date is also the  
4 date when you transfer it to the trusts and set up NewCo,  
5 the benefit company.

6 So I'm thinking out loud, but I think you may have  
7 offered a solution of just making it the distribution date,  
8 but I don't think that works for mootness purposes.

9 MR. PREIS: Yeah.

10 THE COURT: Okay.

11 MR. PREIS: The second point, and I know Mr.  
12 Kaminetzky raised this, this idea of having to give public  
13 notice of when the Debtors even request the notice.

14 THE COURT: No, I understand. I understand that  
15 point. I don't think that really helps very much in any  
16 event. I mean, the key thing is when the District Court  
17 schedules it.

18 MR. PREIS: Correct, yes.

19 THE COURT: Right.

20 MR. PREIS: Okay, that was it. Okay, that was it,  
21 Your Honor. That's all I had. Thank you.

22 THE COURT: Okay.

23 MR. FOGELMAN: Your Honor, may I briefly respond  
24 to Mr. Preis's, frankly, outrageous accusations against the  
25 government?

1 THE COURT: I think you have a right to do that,  
2 Mr. Fogelman.

3 MR. FOGELMAN: Your Honor, I just want to say  
4 about everything Mr. Preis said was a mischaracterization or  
5 just absolutely blatantly untrue. That time, Your Honor, is  
6 all entirely irrelevant as to whether a stay should be  
7 granted.

8 And, you know, I'm happy to go into everything one  
9 by one if Your Honor would like. Again, I don't think any  
10 of this is even relevant, but just to give one brief  
11 example. The government, you know, submitted a letter to  
12 the Court at Mr. Preis's urging, when the government first  
13 was in settlement negotiations with the Sacklers and Mr.  
14 Preis raised the issue about providing those funds toward  
15 abatement.

16 And we clearly explained to the Court on the  
17 record that the government is constrained in how it can  
18 respond by the Miscellaneous Receipts Act. And that, in any  
19 event, while we couldn't direct those monies towards an  
20 abatement fund, you know, the largest recipients of civil  
21 recoveries are federal health care agencies that provide  
22 billions of dollars towards opioid use disorder treatment.

23 So for Mr. Arik to stand up there and make the  
24 statements he made is absolutely outrageous, Your Honor, and  
25 completely irrelevant.

1 I'm not going to -- sorry.

2 THE COURT: Anyway, I think it is largely  
3 irrelevant. The only way it is relevant or the remarks  
4 about the role of the federal government in the case and in  
5 history of prior settlement really goes to what the U.S.  
6 Trustee's public interest argument is.

7 And in that sense, I think the U.S. Trustee has  
8 been clear, in front of me at least, that it's not focusing  
9 on anything other than its party in interest right as a  
10 watchdog over the bankruptcy system, not on the other  
11 interests of the federal government.

12 And on that point, Mr. Preis is basically just  
13 saying that, you know, the watchdog is, in his view, barking  
14 at the wrong person. But I think we should just cut it off  
15 at this point.

16 MR. FOGELMAN: Thank you, Your Honor.

17 THE COURT: Okay. Should I hear from the ad hoc  
18 group of states and other plaintiffs?

19 MR. WAGNER: Yes, Your Honor. Jonathan Wagner  
20 from Kramer Levin Naftalis & Frankel, representing the ad  
21 hoc committee of governmental and other contingent  
22 litigation claimants. Can you hear me?

23 THE COURT: Yes.

24 MR. WAGNER: I'll make some introductory remarks  
25 and then address the issues of irreparable harm, balance of



1 hardship, and public policy. And I'll address a long-term  
2 stay and short-term stay, and I'll try not to repeat the  
3 arguments that have been made today.

4 It's important to remember that the committee  
5 represents dozens of governmental agencies and entities.  
6 And despite the handful of state objections and the U.S.  
7 Trustee's objection, far more government entities support  
8 the plan and oppose a stay than seek a stay; it's really far  
9 more.

10 And there's a super-majority of states who support  
11 the plan and 97 percent of the non-federal domestic  
12 governmental entities who voted on the plan voted in favor  
13 and there's a good reason for that and Your Honor has  
14 recognized that in the confirmation decision. The sooner  
15 the money is allowed to be spent on abatement, the better  
16 the citizens of those states and those supporting states and  
17 local governments will be.

18 And despite suggestions to the contrary, the  
19 dissenting states, their citizens will benefit as well.  
20 They'll get their fair share of the monetary recovery, and  
21 they'll get non-monetary benefits as well.

22 So let me now turn to irreparable harm, balance of  
23 hardships, and public interest. In terms of a long-term  
24 stay, that issue has been addressed in Mr. Guard's  
25 declaration, which Your Honor I know has read and read

1 carefully, and it's been addressed in the other declarations  
2 as well.

3 And just to sum up at Paragraph 16 of his  
4 declaration, "The abatement plan is designed to save lives,  
5 and any delay in funding the abatement plan will thwart that  
6 critical goal." And between now and June, there's close a  
7 billion dollars that's supposed to be allocated with respect  
8 to abatement. That's a serious amount of money.

9 In terms of a short-term stay, I make three  
10 points. Most of the points on the short-term stay have been  
11 made already, including with respect to equitable mootness -  
12 - that's clearly off the table -- the mechanics of the  
13 sentencing, and also the suggestion that somehow the Court  
14 can cherry pick the settlement here and have it rejigger.  
15 This was a settlement that was really a herculean task to  
16 achieve, and it was carefully constructed and can't easily  
17 be pulled apart.

18 The three points I want to make on the short-term  
19 stay are as follows. First, burden matters, and here the  
20 burden is squarely on the movants, and they have not  
21 satisfied their burden.

22 Second, a stay, even a short-term stay, creates a  
23 cloud and to give one -- and an unnecessary cloud. And just  
24 to give one example, the committee has been interviewing  
25 potential board members for the MDT, the NOAT, and for

1 NewCo. And I think it's not a stretch to say that the more  
2 there's a delay in the effective date of the plan, the more  
3 the candidates -- some of them are very prominent people --  
4 may be reluctant to sign on.

5 And then the final point I want to make with  
6 respect to the short-term stay is that the Court has to  
7 exercise its equitable powers sparingly. That's, in many  
8 cases, just give you a couple, United States against Veres,  
9 1989 U.S. District Lexis 7069 at \*17, "A court should  
10 exercise its equitable powers sparingly." And the same  
11 point is made in many bankruptcy cases, In re Rix 2015 B.R.  
12 Lexis 3988 at \*6.

13 And in light of the safeguards that have been  
14 offered here, it would be an improper exercise of the  
15 Court's equitable powers to grant a stay.

16 The last point I want to make, and I hope this  
17 isn't a point that Your Honor has to address, is the bond.  
18 I don't think Your Honor needs to get into the issue of  
19 whether the U.S. Trustee needs to post a bond because the  
20 states do. And Your Honor made the point, citing the  
21 advisory committee language and other opponents of the stay  
22 have cited the cases, that made clear that the states can't  
23 piggyback on any rules that might apply to the U.S. Trustee.

24 That's all I have, Your Honor, unless you have any  
25 questions.

1           THE COURT:   Okay.   Well, I guess -- look, what  
2   I've been considering is not a stay, but an order denying  
3   the motion on conditions, so that would obviate the need to  
4   deal with a bond.   And, you know, I don't think that your  
5   side of the issue would prefer a stay with a bond to that,  
6   right?

7           MR. WAGNER:   Certainly not.

8           THE COURT:   Okay, all right.   Thank you.

9           MR. WAGNER:   Thank you.

10          THE COURT:   I'm also assuming, because I would  
11   also, if I were to grant a stay, condition it on the ongoing  
12   commitment as the appellants have already committed, to  
13   pursue all appellant relief on an expedited basis.   But I'm  
14   assuming they will continue to do that based on their  
15   statements and their understand of the importance of  
16   resolving these issues promptly.

17          MR. LIESEMER:   Your Honor, may I be heard very  
18   briefly?

19          THE COURT:   Sure.

20          MR. LIESEMER:   Jeffrey Liesemer on behalf of the  
21   MSGE Group.

22                 Your Honor, when Judge McMahon ruled on the United  
23   States Trustee's emergency motion for a stay before she  
24   denied it without prejudice and she did so on the condition  
25   that the appellees, which included the MSGE Group, enter

1       into a stipulation saying that all of the preparatory  
2       actions under the advance order are not a basis for invoking  
3       equitable mootness. She ordered the Debtors to impose a 14-  
4       day advance notice requirement on any effective date, and  
5       she also said that the appeals would proceed on a rocket  
6       docket.

7               And on that basis with those guardrails in place,  
8       Judge McMahon said that the U.S. Trustee's speculation about  
9       the possibility of equitable mootness did not rise to the  
10      level of irreparable harm, and I would submit that it's the  
11      same today. There really hasn't been any material change.  
12      The movants haven't identified anything that changes the  
13      situation from the time that Judge McMahon has ruled.

14             And in addition to that, we have the Debtor, who  
15      has offered up even additional guardrails, and Your Honor is  
16      now contemplating guardrails as well insofar as denying the  
17      stay motions with conditions.

18             So no showing with respect to irreparable harm and  
19      specifically equitable mootness has been made, and I think  
20      the motions can be safely denied on that basis, subject to  
21      the guardrails, which Judge McMahon found to be sufficient  
22      as is.

23             With respect to a longer-term stay, we share Your  
24      Honor's concerns that that would clash with Rule 8025 and  
25      essentially read Rule 8025 out of the bankruptcy rules. And

1 so, therefore, if there were a stay in place if they did  
2 make their showing, then it would have to be limited up  
3 through the District Court's ruling.

4 And with respect to the other elements, with  
5 respect to balance of harms and the public interest and the  
6 bond in the event that there would be an unlimited stay to  
7 allow the appellate avenues to be exhausted, we simply stand  
8 on our papers and on Colin Jorgensen's declaration.

9 Your Honor understands the point as time  
10 progresses, the financial and human toll increases, and that  
11 puts a big weight against any stay. And with respect to  
12 public interest, there is public interest in settlements and  
13 the finality of reorganizations and, above all, finding one  
14 way to resolve this public health crisis.

15 So we join the other opponents in opposing any  
16 stay pending appeal. Thank you.

17 THE COURT: Thank you.

18 MR. SHORE: Your Honor, Chris Shore from White &  
19 Case on behalf of the ad hoc group of individual victims.

20 I want to -- and I've been feverishly kind of  
21 working on my notes to address what I think is the issue  
22 here, both respect the long-term stay, short-term stay, and  
23 the idea of a denial of motions with conditions.

24 Let me start here. Look, we tried to address the  
25 issue outside of Court with respect to essentially a denial

1 of the stay without conditions. The appellants refused, so  
2 now we have two pending motions with two separate requests:  
3 one is a pending motion for a stay through the District  
4 Court decision plus 14 days, and another is a request from  
5 the U.S. Trustee for a stay through all appeals.

6 I think you need to deny both of those on the  
7 merits with findings and conclusion. And you ask, why can't  
8 I just do this simply if we prevail at the District Court on  
9 the appeal, and we think we will -- we wouldn't be here  
10 fighting this and have fought for the plan if we didn't  
11 think we will -- there is going to be another hearing.  
12 Whether that is in the end of December or the beginning of  
13 January, someone's bringing a motion in front of Judge  
14 McMahon for the big stay, the one that nobody can control,  
15 which is the time between when the Second Circuit appeal  
16 gets docketed and when the Second Circuit rules.

17 So there is a fact of a hearing coming up. And as  
18 one of the very creditor constituencies who isn't either  
19 funded by taxpayers or by the estate, we simply can't have  
20 10-hour hearings all the time on these subjects without  
21 getting work-product which can be used in subsequent  
22 hearings.

23 So my request is that we actually make use of the  
24 evidentiary record that's here, not just throw this to Judge  
25 McMahon to deal with with her busy docket and to have a

1 whole other hearing, evidentiary hearing, which she may not  
2 even have the time for given the announcement of what her  
3 schedule is.

4 So let me turn to the merits on why you should  
5 deny the stay and what the specific findings I'm talking  
6 about. Let me just address very briefly the likelihood of  
7 success because no one touched on this. I'll only say this:  
8 The order that was presented to you reflected what the  
9 Debtors conceded, not what anybody else did. We all became  
10 appellants after that hearing, or at least we became  
11 appellants after that hearing over the objection of the U.S.  
12 Trustee and we all joined the argument. So that's a  
13 technical argument that you can get rid of.

14 I want to focus on only one event: The day that  
15 the Debtors are ready to consummate their plan but can't  
16 because of some existing stay or the existence of some  
17 conditions and how we protect the individuals, just the  
18 individuals, from the harms accrue from that day forward. I  
19 think those harms accrue whether the stay is short or  
20 whether the stay is long, and I want to address an issue  
21 that Mr. Preis raised on that (sound glitch).

22 Let me start here. You know that at the beginning  
23 of the hearing that (sound glitch) rules are set up so that  
24 (sound glitch) did this. It's not, I don't think, because  
25 the Bankruptcy Court is likely to agree or disagree that its



1 own findings are subject to appeal or not, but rather  
2 because the Bankruptcy Court is in the best position,  
3 understanding who the parties are, what they're looking for,  
4 what they're promising, and what the harms are in the event  
5 there is or is not a stay.

6 So even if Judge McMahon were to rule before an  
7 available exit and contemplate a further stay, this Court's  
8 view of what (sound glitch) stay, that is a stay that would  
9 exist through a Second Circuit ruling or a cert denial may  
10 prove critical to her own analysis, which is likely have to  
11 be conducted on a short notice brief period if and when that  
12 (sound drops).

13 As to the harm calculus here, as we pointed out in  
14 our objection, it's not a one-size-fit-all analysis. Each  
15 applicant must make its own case based upon its own harmed  
16 balanced against the harms to the others and the public.

17 The U.S. Trustee is in a different position than  
18 the states. First, they allege no harms to themselves.  
19 They have no economic (sound glitch) in the outcome of this  
20 (sound drops). Two, the U.S. Trustee's claim, I think as  
21 part of the public interest prong, is that there's a  
22 societal harm of the erosion of constitutional rights of  
23 individuals who allegedly have direct claims against the  
24 Sacklers, which are being released for no compensation.

25 I'm not going to repeat arguments I made at the

1 last hearing regarding this no compensation argument. I'll  
2 just say that the intention is both counterfactual in light  
3 of the TEPs and inflammatory. But their whole analysis  
4 centers on the harm to these hypothetical individual Sackler  
5 claimants.

6 Now, as we pointed out in our objection, we  
7 represent probably the bulk of individuals who would  
8 otherwise have the right to bring claims against the  
9 Sacklers in light of the fact that 35,000 of our group  
10 didn't vote on the plan and several hundred voted no.

11 But I think the U.S. Trustee misses the mark when  
12 they attack our group for what seems to be a criticism that  
13 we do not speak for every victim. We have never purported  
14 to speak for every victim. We've only purported to speak  
15 for our group, and we have spoken, sometimes in a loud  
16 voice, on behalf of those who've authorized us.

17 In contrast, not one victim has authorized or come  
18 forward in support of the U.S. Trustee's motion for a stay.  
19 And the important part here is not the authorization piece;  
20 it's the lack of identification of the individuals who may  
21 be harmed and a quantification of that harm.

22 At the last hearing, Your Honor spoke directly to  
23 the U.S. Trustee about trauma and what you viewed as the  
24 narrow window that it provides for direct claims against  
25 non-debtor fiduciaries and shareholders. The time for them

1 to come forward with proof of harm was now. What followed  
2 was not proof, but an attempt to cite to complaints that  
3 allege claims squarely within (indiscernible) and Madoff.

4 There was a reference today to the Hartman  
5 pleading, which they did not include. I don't know how they  
6 expect Your Honor to make the analysis that everyone of  
7 these circuit court says is you need to look at the  
8 substance of the claim, not the label, to determine whether  
9 they are derivative claims or individual claims. I've  
10 reviewed the complaints. They are all classic-looking  
11 derivative claim. You can't just say something is a  
12 consumer rights claim when, in fact, it is just dressed up  
13 as a breach of fiduciary duty claim by directors and  
14 officers.

15 So this is a stay hearing where they are supposed  
16 to come forward with evidence. Just saying that someone has  
17 alleged it in a complaint does not quantify the harm of  
18 denying that. There is no articulation -- these claims are  
19 worth \$30, these claims are worth \$100, these claims are  
20 worth a billion dollars. There is none of that in the U.S.  
21 Trustee's application.

22 So what we are left with on their application in  
23 the harm calculus is on the one side, the constitutional  
24 rights of unidentified individuals with unquantified claims  
25 that are hypothetically, but not proven, to be non-

1 derivative, all of which can be asserted and against and  
2 recovered from the TADPs that will be funded by the  
3 Sacklers. That's what their harm is.

4 Balanced against that and what the remainder of my  
5 analysis focuses on and the real harms of real individuals  
6 that accrue the moment the Debtors are ready to consummate  
7 the plan, which could be December 14th, it could be January  
8 6th, whatever, were contemplating that they won't be able to  
9 do that because there is a pending order of court, whether  
10 written as a stay or a denial of a stay with conditions.

11 And let me pause here because people are just  
12 getting it wrong with respect to the harms. There are two  
13 harm prongs and two things to be balanced. The applicant on  
14 a stay needs to prove irreparable harm to them. They also  
15 need to prove the lack of any harm to individuals. It's  
16 their burden. And we're not talking about irreparable harm  
17 because people aren't focusing on, and I think Your Honor  
18 was alluding to it, what a bond means.

19 The bond is the source of recovery for people who  
20 were harmed by the imposition of a stay. None of these  
21 applicants have come forward and said regardless of whether  
22 there's a bond, you can feel free to sue me if I turn out to  
23 be wrong and I lose on appeal after a three-month delay.  
24 That's not how bonds work.

25 Now, as to the harm for the individuals, which

1 need to be protected, some of those harms are mathematically  
2 certain. Under the plan, the personal injury victims don't  
3 ride with the ups and downs of the Debtor. We get a fixed  
4 (sound drops). Whether the plan is funded in December 2021,  
5 January 2022, January 2023, or some other time, the fund and  
6 this plan remains in place, the amount paid stays the same,  
7 which means there is a certain loss of the time value of  
8 money.

9 And to amplify what Mr. Preis said, with respect  
10 to the individuals, once the trusts get funded, then the  
11 notices -- remember, we had the hearing on the advanced  
12 payments so that we can get the notices out immediately --  
13 the notices go out. In addition, all the expenses, the  
14 frontloaded expenses of the trust, can get paid. Then as  
15 soon as someone gets a form, they can check a quick pay and  
16 it can go back and we can start the distribution process.

17 So if the plan is delayed 14 days, the initiation  
18 of that process starts 14 days later, the first payment that  
19 goes out is 14 days after that. So there is a demonstrable  
20 harm in any stay of the effective date of the plan beyond  
21 the date that the Debtors are ready to go forward.

22 There are also mathematically certain but  
23 unquantifiable fees of just the cost of continuing in the  
24 bankruptcy case. The advantage of an effective date is  
25 people can go pencils down with respect to issues that are

1 ongoing in the case. And again, we are not a state funded  
2 or taxpayer funded, my participation in hearings like this  
3 is just coming out of creditor recoveries.

4 I won't touch, because Mr. Preis did it so well,  
5 the harm in delaying abatement funds. But in a world in  
6 which a stay is in place for only 14 days, the Debtors are  
7 told cool it 14 days and 10 -- let's leave aside debts  
8 payment -- 10 new injuries occur, who's paying for that?  
9 Why is it the Debtors responsibility? They wanted to start  
10 the process of getting money out to people. The applicants  
11 came forward and said, hold your horses, I've got  
12 hypothetical rights that need to be protected here in the  
13 interest of (sound glitch) and 10 new injuries occurred, the  
14 United States Trustee is not stepping forward and saying  
15 don't worry, we'll take care of those people.

16 But the real risk here, and which nobody is  
17 articulated and which I think Your Honor needs to tell to  
18 Judge McMahon, is the risk to the deal. Right? Now let me  
19 start -- I'm still trying to wrap my head around a public  
20 use of the plea bonds, a little example, but the personal  
21 injury victims are not holding a gun to anybody. We have no  
22 power over this situation. And unless and until the Debtors  
23 are ready to consummate this plan and the Sacklers are  
24 willing to fund, we're not getting anything. We can't  
25 compel anybody to do anything.

1           And as to the risks of harm, the Court has a  
2           detailed exhaustive record of the difficulties they faced  
3           getting to consensus in these cases, the hard fought triumph  
4           of the deal coming together, especially for victims, through  
5           direct cash payments and the use of essentially all but the  
6           U.S. Government's money for abatement.

7           This Court, not the District Court or the Second  
8           Circuit, is in the best position to understand and  
9           articulate the risks to Debtors, that it should articulate I  
10          believe in findings and conclusions, when their effective  
11          date gets stayed.

12          And the risk is what happens if something stops  
13          the effective date of the plan. First, if this deal were to  
14          fall apart prior to an affirmance, right? We get in a  
15          situation where someone delivers a termination of the deal,  
16          right, and then we find out we were right all along. And  
17          were this case to liquidate, there's unopposed evidence that  
18          everybody gets nothing. The liquidation analysis results in  
19          a zero for individuals.

20          That's not hypothetical. Remember Mr. Preis said  
21          to you with respect to the super-priority admin claim, the  
22          U.S. Government has not committed that in the event that the  
23          confirmation is -- or sorry -- the plan does not go  
24          effective, they won't set forth their super-priority  
25          administrative claim. In other words, there is a real

1 possibility if this deal doesn't get to closure that all of  
2 the money goes to the United States. Does anybody really  
3 want to be responsible for that?

4 The Court's also in a unique position to  
5 understand what basis what a big case like this puts forward  
6 in terms of harms, the potential harms, to a deal in an  
7 uncertain period. First, plans face market risks. During  
8 this case, the Dow had its second biggest percentage drop  
9 ever. Is anybody really committing that if the Dow goes up  
10 30 percent that we're all going to let the Sacklers walk  
11 away with that additional bounty, or if the Dow goes down 30  
12 percent, the Sacklers are still going to be willing and able  
13 to fund?

14 Plans face regulatory risk, right. I mean, those  
15 risks in all fields that occurred or what they're talking  
16 about there, let's get the Sacklers out of jail for free  
17 deal, regulations change and what was possible at one point  
18 in time may not be possible later. Again, is that really  
19 going to happen between December 14th and January 7th?  
20 Probably not, though not certain. But if we're talking  
21 about informing Judge McMahon of what could happen between  
22 January and August, that matters.

23 Plans face legislative risks. Nobody here, by the  
24 way, none of the appellants here is committing that they  
25 would not be pursuing any legislation that could have an



1 impact on this case.

2 Plans face political risk, especially in this case  
3 in which half the creditor body are elected officials. The  
4 notions that come or others will all stay in the deal as  
5 their political landscape changes is not certain.

6 And as Your Honor noted during the confirmation  
7 hearing, this settlement is around a shifting landscape of  
8 judicial precedent that exists, all of which at any given  
9 time will empower somebody who cut the deal to say they got  
10 a bad deal and somebody else to say they got a good deal.

11 Obviously, the risks increase over time. But  
12 nobody is promising anything if they are wrong in the law  
13 and it takes long enough for us to prove that to the  
14 Appellate Court that the plan falls apart and we have to  
15 start over. Nobody is assuring that a plan which is  
16 consummatable on December 14 will still be consummatable on  
17 January 14th.

18 So how does this play out? Again, I think the  
19 U.S. Trustee, given their role, statutory role, and the  
20 absence of any direct harm to them and the fact that they're  
21 purporting to speak on behalf of individuals and have yet to  
22 articulate who they're speaking for, what their claims are,  
23 and what they're worth should have their application denied  
24 on the merits with prejudice right now with specific  
25 findings about their lack of proof, with one caveat.

1           They've taken the position that they have zero  
2       responsibility to post the bond. I don't need to get into  
3       that argument at this late date. They have zero economic  
4       responsibility if they're right.

5           So deny their motion. But they can be clear,  
6       nothing prevents the U.S. Trustee from piggybacking off a  
7       stay that is awarded to some other party, and nothing  
8       prevents the U.S. Trustee from volunteering to post a bond  
9       to protect for a month.

10          So what does a bond look like with respect to the  
11       other applicants? I don't think any stay is necessary. I  
12       think a denial of the stay with conditions isn't necessary.  
13       But we have no objection to this Court giving Judge McMahon  
14       until January 7th to rule.

15          But if the Debtors are ready to consummate before  
16       January 7th, they should provide a notice, everybody, 14  
17       days that we're ready to consummate. And that will give the  
18       applicants the opportunity to post a bond in that window if  
19       they want to have a stay or they can go to Judge McMahon if  
20       they're riding on her stay, that is your stay is requiring  
21       and she still hasn't ruled, that gives them an opportunity  
22       to raise that with (sound drops).

23          Even with respect to this short bump, right.  
24       That's our only source of recovery for both catastrophe and  
25       the mathematically certain funds that accrue. We shouldn't

1 equate an opportunity for a meaningful appellate review with  
2 a free opportunity for appellate review. And I tend to that  
3 that if and when the states are forced into a position of  
4 having to post a bond, they'll think long and hard about  
5 their pursuit of further appellate relief beyond Judge  
6 McMahon.

7 To form an amount, I'm not -- I can't quite figure  
8 out how best to create the right dynamic for that. But it  
9 seems to me that if the Court set a per diem or a bond for  
10 the period between the time the Debtors are ready to rule  
11 and when Judge McMahon are ready to exit and when Judge  
12 McMahon rules, that will precipitate a discussion with Judge  
13 McMahon about when she is able to rule. And it will allow a  
14 ready calculation. If she says I can't do it by the 7th, I  
15 can do it by January 30th, that's 23 days of per diem  
16 (indiscernible). And I tend to think, as I said, that  
17 sparks a conversation about how this is going to proceed  
18 forward.

19 As to the larger bond, I guess if Your Honor is  
20 not contemplating extending beyond the time that's necessary  
21 for her to rule, it still, as I said, provides context if  
22 you were to provide findings and conclusions that there are  
23 real harms, demonstrable harms, and the manifest risk of  
24 catastrophic harms that need to be protected with a bond.  
25 Again, subject to upward or downward revision by Judge

1 McMahon and subject to what other parties use. But we're  
2 talking about (indiscernible) in the hundreds of millions of  
3 dollars or billions. Because if the risk were to manifest  
4 itself, something comes out that causes somebody to walk  
5 away from this deal and we end up in a liquidation scenario,  
6 nobody wants to wear the risk of having stopped a plan which  
7 would have provided (indiscernible) to people and that  
8 turned out to be legal, but nonetheless was frustrated  
9 because there was an open-ended stay in place.

10 Not one of the states has come forward and say  
11 they didn't have the wherewithal to post a bond. And again,  
12 a bond only sets the outside amount of the damages which get  
13 compensated. If it turns out that they have to post a \$500  
14 million bond and only a million dollars is proven to be the  
15 actual damages, so be it. Then only a million dollars gets  
16 compensated out of that. But we don't set a bond based upon  
17 a hope that the debtors will be able to consummate in this  
18 fixed 12-month window that the Second Circuit is going to  
19 need to be able to issue what we all hope will be a ruling  
20 which sets forth in chapter and verse exactly what the rules  
21 are with respect to non-debtor reliefs.

22 The last point on these conditions. Conditions  
23 run both ways. And this is why I think that the denial with  
24 conditions on the Debtor which you are raising now is a bit  
25 fraught. Conditions run both ways, right? The appellants

1 here will be taking an opportunity of having an additional  
2 14 days to do whatever they're going to do. Are they  
3 allowed to legislate in that period? Are they allowed to  
4 exercise their police powers in that period? Are they, as  
5 Mr. Kaminetzky hinted to, able to stand in front of the  
6 district court in New Jersey and argue that the Court should  
7 adjourn that hearing? Right? Which would be the setup date  
8 for how this goes forward. Are they required to commit to  
9 move quickly as well? Are they free to argue in front of  
10 the Second Circuit that they really need 90 days to file a  
11 (indiscernible).

12 I just think lifting it and saying a denial with  
13 conditions opens up a whole debate about what they're  
14 allowed to do that I think (indiscernible) with a denial of  
15 these motions on the merits or -- or if they want a stay, a  
16 stay with an interim bond requirement, that is a shot bond  
17 requirement and an understanding going forward of what that  
18 stay -- that bond is going to look like if we are getting a  
19 ruling, you know, at the end of December or the beginning of  
20 January.

21 THE COURT: Okay.

22 MR. SHORE: And other than that unless Your Honor  
23 has any questions, that's all I have.

24 THE COURT: Okay.

25 MR. ISRAEL: Good afternoon, Your Honor. Harold

1 Israel on behalf of the NAS Committee. May I be heard very  
2 briefly?

3 THE COURT: Sure.

4 MR. ISRAEL: Thank you, Your Honor. The NAS  
5 Committee, another entity that is not funded by the  
6 taxpayers, represents the most innocent victims of the  
7 opioid crisis, the NAS children, will focus its argument  
8 exclusively on the irreparable harm and the public interest  
9 in light of Mr. Shore and Mr. Preis' arguments which they  
10 adopt.

11 The appellants in this case have made clear that  
12 they will go to the ends of the earth to prevent the plan  
13 from becoming effective. In the meantime, the opioid crisis  
14 rages across the country.

15 A stay will mean, ironically, that the Sacklers  
16 will retain all of their money, except of course what they  
17 have to pay the professionals, while compensation to the NAS  
18 children and the other personal injury victims will be  
19 delayed indefinitely if not forever. There will also be a  
20 delay of billions of dollars of abatement funds that would  
21 otherwise be used to combat the opioid crisis and a delay in  
22 making vital documents available to the public through the  
23 document repository.

24 For what reason? So that the appellants can exact  
25 vengeance on the Sacklers without any regard to whether

1       there will be any corresponding benefit to the personal  
2       injury victims, including the NAS children, of the opioid  
3       crisis.

4               To be clear, the NAS Committee had hoped for a far  
5       larger settlement. However, the plan, including the  
6       settlement and the third-party releases and the  
7       corresponding public interest must be viewed in reality.  
8       The NAS class voted overwhelmingly in favor of the plan, and  
9       Kara Trainor, a parent of an NAS child, outlined in great  
10      detail in her declaration why she supports the plan,  
11      notwithstanding her personal situation. The appellants  
12      ignore this massive support of both the voters and Ms.  
13      Trainor in their pleadings.

14             Simply put, a stay of the confirmation order  
15      delays implementation of what could be lifesaving programs  
16      for opioid victims, current and future, and compensation for  
17      some of the neediest people in the country. For what? So  
18      perhaps the U.S. Government can get an additional \$2 billion  
19      at the expense of all other claimants, a result worse than  
20      the tobacco litigation? Or so three states or five states  
21      can make life miserable for the Sacklers by litigating  
22      against them for the foreseeable future, resulting in no  
23      compensation to the NAS children and the other opioid use  
24      victims and allowing the Sacklers to retain billions of  
25      dollars that would otherwise go for abatement? Who wins in

1 this case?

2 Vengeance is not a purpose of the Bankruptcy Code  
3 and will not compensate the NAS children or the other opioid  
4 victims, will not fund research and other abatement  
5 strategies, will not make millions of opioid-related  
6 research documents available to the public domain. It will,  
7 however, allow the Sacklers to retain more of their wealth  
8 than they would under the plan. It cannot be said that such  
9 a result is in the public interest. Thank you, Your Honor.

10 THE COURT: Okay, thank you.

11 I don't know if any other objectant wants to  
12 speak. I forgot to ask Mr. Kaminetzky if he could update me  
13 on the termination right that was addressed in the pleadings  
14 and in Mr. Gold's argument.

15 It seems to me that, at least with respect to the  
16 type of relief I am contemplating, it's highly unlikely that  
17 that termination right would be exercised. But I'd like  
18 your thoughts on where it stands, whether it's been waived  
19 through the date that you've proposed and the like.

20 MR. KAMINETZKY: Apologies, Your Honor, for that  
21 dramatic camera movement.

22 The answer is I don't -- we have not had that  
23 discussion. Maybe you should ask the Sackler. This is  
24 something that was heavily negotiated and it's in there,  
25 it's part of the agreement. I would suspect that it won't



1 be a problem given the short term that we're talking about.  
2 But kind of following up, I mean, it's in there, and it's  
3 their right to waive it or not.

4 Unlike the previous way that we talked about  
5 before when it came to the direct certification, I don't  
6 have an answer sitting here whether or not they'd waive, but  
7 I certainly hope that they would.

8 Maybe it's time to mention just to underscore --  
9 and maybe this is the appropriate time in the changing  
10 landscape. During this hearing, actually, the Oklahoma  
11 Supreme Court reversed the J&J judgment, saying that public  
12 nuisance statute doesn't apply in this area to legally-  
13 manufactured products. And this comes on the heels of the  
14 California decision earlier this week going the same way.

15 But let me just leave it at that. And, you know,  
16 I assume you could direct this to the Sacklers.

17 THE COURT: Okay. Well, do I have the two sides  
18 of the Sacklers' counsel on the call?

19 MR. UZZI: Your Honor, it's Gerard Uzzi of  
20 Millbank on behalf of the Raymond Sackler Family.

21 THE COURT: Afternoon.

22 MR. UZZI: As it relates to -- go ahead, Your  
23 Honor, I'm sorry.

24 THE COURT: I was going to say, first of all, I'm  
25 not sure whether the denial of these motions as I've posited

1 it would trigger the termination right. But assuming it  
2 did, would that brief extension be something that your  
3 clients would be prepared to assert as a termination right?

4 MR. UZZI: Well, Your Honor, just before I get to  
5 that, just to check a box. As it relates to what Mr.  
6 Kaminetzky raised on the issue of certification, that has  
7 been waive. I think, frankly, we had formally memorialized  
8 it (indiscernible).

9 THE COURT: Right.

10 MR. UZZI: As it relates to -- I think the  
11 termination right you're referring to now is that three  
12 months after confirmation date -- there has not been a  
13 request made of our clients to waive that. So I'm not in a  
14 position today to say (indiscernible) specifically on that  
15 issue. And right now we are anticipating at least that the  
16 court is going to rule before then, the district court is  
17 going to rule before that time.

18 Your Honor, I don't want to speculate as to if and  
19 when I do consult with my client as to what they'll say  
20 other than to say we've come this far, Your Honor. There is  
21 certainly not a desire to abandon this at this point.

22 THE COURT: Okay, thank you.

23 Ms. Monaghan, I know you represent the other side  
24 of the Sackler family.

25 MS. MONAGHAN: Correct, Your Honor. On behalf of

1 the so-called Side A of the family, we are in the same  
2 position as Mr. Uzzi is in that no request was made of us  
3 for a waiver. That said, we're not looking to walk away  
4 from the settlement in any regard. I just haven't actually  
5 gotten instruction from my clients on the questions they  
6 have put to us.

7 THE COURT: Okay, thanks. Okay. I said that I  
8 would be willing to hear a brief rebuttal, but I really want  
9 this to be very brief, not a rehash of arguments that have  
10 previously been made, if anyone wants to speak in rebuttal.

11 MS. LEVINE: Your Honor, this is Beth Levine. My  
12 computer is going very slowly right now, so hopefully we'll  
13 get video in a second. I did just want to speak briefly. I  
14 will try not to repeat anything. I wanted to address a  
15 couple of things that have been raised that I think are  
16 inaccurate.

17 You know, there was a suggestion that it is  
18 somehow improper for us to seek a hearing because while we  
19 tried to negotiate a consensual resolution, it didn't work.  
20 And we did as part of that effort suggest why don't you give  
21 us -- you know, if you've got a list of things you have  
22 exempted from the stay, tells what they are. And, you know,  
23 it didn't work.

24 THE COURT: I am not blaming either side for the  
25 fact of this hearing. I had the opportunity after the

1 appellees sent me an email requesting a chambers conference  
2 to meet and see if a settlement could be obtained. And I  
3 just concluded it was of more benefit to have a full record.

4 MS. LEVINE: Thank you, Your Honor. There were  
5 suggestions or allegations that the United States Trustee is  
6 taking the position it's taking because it's trying to get  
7 the, you know, \$2 billion. And that is just an absolutely  
8 baseless allegation. I think if Your Honor wanted to hear  
9 more about that, Mr. Fogelman could address it. But I think  
10 it's enough to say that that's baseless. We've taken this  
11 position on the non-debtor releases the whole time. It's  
12 not just some way to try and get back that money.

13 With respect to the United States Trustee's role,  
14 I think you've recognized in your comment that, you know, we  
15 are not representing the government in its creditor role,  
16 but we are representing the government in the government  
17 interests. We obviously have a disagreement on where the  
18 public interest is. You know, we've talked about the harm.  
19 I don't want to repeat myself but, you know, we don't  
20 represent individual victims, White & Case doesn't represent  
21 individual victims. They've acknowledged they don't  
22 represent anyone. There are individuals who have come  
23 forward and objected. There have been over 200,000 people  
24 who voted no. So we've cited some of those examples. Ms.  
25 Isaacs, for example, Mr. Hartman. And we did include the

1 complaints in our request for judicial notice, including Mr.  
2 Hartman's complaint.

3 With respect to the suggestion that we might  
4 voluntarily post a bond, we don't have the authority to do  
5 that, so we think that's just not a factor to be considered.

6 THE COURT: Well, I would consider it in the sense  
7 of it's a factor to consider in balancing the harms. Not as  
8 something that I could require, but the absence of one may  
9 make it harder to balance the harms in your client's favor.

10 MS. LEVINE: I do think it's interesting with  
11 respect to this question of the termination right. There  
12 are two questions. One is just as a factual matter; my  
13 understanding is that termination right doesn't come into  
14 play if there has been a delay because of licensing delays.  
15 And we don't know what the status is, but we think it's  
16 interesting that the Debtor's proposed the stipulation  
17 without checking on that. But we don't think, as we put in  
18 our papers, that that is likely to happen. And it does not  
19 sound like it is based on what's been said here today.

20 Lastly, you know, obviously we are here on our  
21 motion. We're asking for a stay at least until the district  
22 court's decision. But with respect to the order it sounds  
23 like you are considering, you made a comment that I wanted  
24 to clarify, which is whether you're suggesting you would  
25 enter or include in your order a limit on the ability to

1 seek a stay from the district court.

2 THE COURT: No, I don't remember saying that.

3 MS. LEVINE: Okay. Then I may just have not heard  
4 that correctly.

5 THE COURT: It's just the opposite. You would  
6 have the ability to seek a stay from the district court  
7 after you get the notice.

8 MS. LEVINE: Your Honor, it's been a long day. I  
9 don't want to repeat what we've said. Obviously we disagree  
10 with a lot of what the stay movants had said, but we will at  
11 this point stand on our papers and I will cede the floor to  
12 any other movants who had something to add.

13 THE COURT: Okay.

14 MR. EDMUNDS: Your Honor, if I may just for less  
15 than a minute. Brian Edmunds for the State of Maryland. I  
16 would just point out some of the overarching themes that  
17 have been presented to you, that we are a state and we are  
18 charged with protecting our public and believe that we are  
19 doing that in appealing. And I think that some of the  
20 arguments that would give to us the status of essentially a  
21 private creditor are what requires us to appeal. I think  
22 that it's our job, and we do this, to protect. And we are  
23 spending money now on the opioid crisis on trying to abate  
24 it. And I think that our -- I think it's important to  
25 remember that and recognize that, that we wouldn't be doing

1 this and pursuing an appeal if we didn't think that we were  
2 serving the public. And that's all I have, Your Honor.

3 THE COURT: Okay.

4 MR. GOLD: Your Honor, Matthew Gold, Kleinberg  
5 Kaplan. Can you hear me?

6 THE COURT: Yes.

7 MR. GOLD: Thank you. Your Honor, I too will be  
8 very brief. First, I just want to note that the argument  
9 that Mr. Preis made, and we've heard this several times  
10 about how criminal liability is not being affected by this,  
11 is a total red herring. No one has ever contended the  
12 criminal liability was implicated by this, but that's not at  
13 all the point. The states have a significant statutory  
14 scheme that involves both criminal and civil penalties for  
15 which to go against wrongdoers. And among other things,  
16 there are different burdens of proof. And that's why the  
17 states have both criminal and civil laws that play in this  
18 area.

19 And it's not for Mr. Preis or the Debtors to say  
20 you have your criminal remedies, that's enough, you don't  
21 need those other ones, in the first instance. And secondly,  
22 for us to be pointing out that the result of this settlement  
23 and this plan is to give the Sacklers complete immunity of  
24 their opioid-related obligations on the civil side does not  
25 mean that we're implying that it has anything to do with the

1 criminal liability. And it's valuable enough that the  
2 Sacklers have been insisting on it. So I think that's just  
3 simply a matter of misdirection.

4 Second, I just want to note Mr. Shore, after  
5 making a statement about how we needed to not engage in  
6 speculation and to needed concrete matters, engaged in a 10  
7 to 15-minute series of speculations and hypotheticals about  
8 various risks without evidence about them occurring, but  
9 simply as speculation that this might happen and that might  
10 happen as risks involved of Court's resolution. We submit  
11 that those are not germane for these purposes and have no  
12 demonstrated basis other than just speculation.

13 Third, I just want to note that this morning, I  
14 stated for the record, and not for the first time, that  
15 states are extremely willing to try to find a way to  
16 mitigate the harms to parties and allow the appeals to  
17 proceed. I heard not a whisper, complete crickets from all  
18 the objecting parties with respect to engaging with us on  
19 that point. And we can't do it by ourselves.

20 THE COURT: I know you can't do it by yourself,  
21 but you can't do it without Maryland and the U.S. Trustee,  
22 too. And they're not willing to do that. So, I mean, it's  
23 good for your two clients, but it would be a waste of time  
24 if they are not prepared to do it. And I took away from  
25 their candid comments that they aren't.



1 MR. GOLD: Okay. We will review the issue with  
2 them, Your Honor.

3 THE COURT: Okay.

4 MR. GOLD: Thank you for that comment.

5 THE COURT: If they were, that would be great.  
6 But that's not the record before me.

7 MR. GOLD: Okay. Thank you, Your Honor. I have  
8 no further comments.

9 THE COURT: Okay. All right. I have before me  
10 three motions for a stay pending appeal, a first day motion  
11 by the United States Trustee for a stay pending appeal of  
12 two orders, the Court's order confirming the Twelfth Amended  
13 Chapter 11 Plan in these cases, and secondly, the Court's  
14 so-called Advance Order permitting the Debtors to take  
15 certain procedural steps and spend a relatively modest  
16 amount of money to be more ready to effectuate the  
17 transaction under the plan if and when the effective date  
18 occurs.

19 The other two motions are first by the states of  
20 Washington and Connecticut, and second by the State of  
21 Maryland, which seek a stay pending appeal over the  
22 confirmation order.

23 Three other appellants have joined in one or the  
24 other of those motions, and in respect of one of them have  
25 supplemented the joinder to some extent. So Mr. Bass has

1 joined in the other motions, although it is clear to me both  
2 from his filing and his remarks today that his focus really  
3 was not on a stay pending appeal of the confirmation order -  
4 - he hasn't joined in or appealed the advance order -- but  
5 rather to have the briefing schedule and hearing schedule  
6 with respect to his appeal delayed by the district court.  
7 And I have explained to him that that really is a decision  
8 for the district court to make.

9 I also have a motion and a joinder by certain  
10 Canadian Creditors, Municipality, and First Nations  
11 Claimants that has joined in the other motions, although I  
12 don't believe that they have appealed the advance order.  
13 And that they primarily focus, if not exclusively focus on  
14 the issues raised by the states. And I have Ms. Isaacs'  
15 motion, which literally adopts the State of Washington and  
16 the State of California -- I'm sorry, the State of  
17 Connecticut's motion.

18 When I address the State of Washington and the  
19 State of Connecticut's motion, I will also be addressing,  
20 therefore, Ms. Isaacs' motion. And similarly, when I  
21 address the first three motions that I mentioned, I will be  
22 addressing the Canadian claimants' motion except when I  
23 briefly address their unique issues on the prong in the  
24 standard for evaluating motions for a stay pending appeal,  
25 focusing on the need for a strong showing that the movant is

1       likely to succeed on the merits of the appeal.

2               The movants have the burden of proof with respect  
3       to their motions for the stay pending appeal, and that has  
4       been characterized as a heavy one. And the grant of a stay  
5       pending appeal has been characterized as extraordinary  
6       relief. See *In re General Motors Corp.*, 409 B.R. 24 (Bankr.  
7       S.D.N.Y. 2009 with regard to the first point, and *In re*  
8       *Sabine Oil & Gas Corporation*, 551 B.R. 132, 142 (Bankr.  
9       S.D.N.Y. 2016) on the second point.

10              The grant of a stay pending appeal is an exercise  
11       of judicial discretion dependent on the circumstances of a  
12       particular case, *id.* *Sabine Oil*, 548 B.R. 681 and *In re*  
13       *General Motors*, 409 B.R. 30. They are, again, treated as an  
14       exception, not the rule, and are granted only in limited  
15       circumstances, *In re Brown*, 2020 WL 3264057, at \*5 (Bankr.  
16       S.D.N.Y. June 10, 2020).

17              To satisfy its burden to obtain a stay pending  
18       appeal, the movant needs to establish a proper balance in  
19       its favor of the following four factors; whether the movant  
20       has made a strong showing that it is likely to succeed on  
21       the merits, whether the movant will be irreparably injured  
22       absent a stay, whether a stay will substantially injure the  
23       other parties interested in the proceeding, sometimes  
24       referred to as the assessment of the balance of harms, and  
25       four, where the public interest lies. See *Nken v. Holder*,

1 556 U.S. 418, 434 (2009) and Kelly v. Honeywell Int'l, Inc.,  
2 933 F.3d 173, 188-184 (2d Cir. 2019).

3 The Honeywell case is an important gloss on the  
4 first factor requiring a strong showing that the movant is  
5 likely to succeed on the merits of the underlying appeal by  
6 its focus on the need for that showing to show a fair ground  
7 for litigation. A number of courts have phrased this as a  
8 showing regarding the success on appeal somewhere between  
9 possible and probable. Again, see Brown, 2020 WL 3264057 \*7  
10 and Sabine Oil, 548 B.R. 683, 684, which also notes in Judge  
11 Chapman's opinion that the probability of success that must  
12 be demonstrated can be viewed as inversely proportional to  
13 the amount of irreparable injury that the movant will suffer  
14 absent of the stay. In other words, more of one excuse is  
15 less of the other, id at 684.

16 I will briefly address the first prong, which,  
17 along with the prong of a showing of irreparable harm, are  
18 the two factors that are viewed as most critical in the  
19 analysis, Nken v. Holder, 556 U.S. 434. See also Uniformed  
20 Fire Officers Association v. De Blasio, 973 F.3d 41-48 (2d  
21 Cir. 2020).

22 This analysis of the merits by the court that  
23 issued the order upon which the appeal is based is one that  
24 places that court in the position of looking at its ruling  
25 objectively as one would from the outside to see whether

1       there are fair grounds for litigation of the appeal. And  
2       depending on the strength, or lack thereof, of a showing of  
3       irreparable harm, perhaps more than that to warrant a stay.

4               Obviously the Court's determination of the issues  
5       before it that are the subject of the movants' appeals was  
6       carefully undertaken by me after a lengthy trial and set  
7       forth in a 155-page written memorandum of decision. The  
8       issues on appeal I believe do not all warrant a finding of a  
9       strong showing likely to succeed on the merits or of likely  
10      success on the merits somewhere between possible and  
11      probable. Again, recognizing the sliding scale for this --  
12      for purposes of this stay pending appeal determination.

13             Certain of the issues raised I believe are clear  
14      under applicable Second Circuit law and a real stretch by  
15      the appellants. Those include the so-called due process  
16      argument, the so-called 524(e) argument, the analysis of the  
17      merits of the settlement, and the argument that the Second  
18      Circuit should change its law from how it is currently  
19      articulated.

20             As far as the due process argument is concerned,  
21      the United States Trustee has argued that the plan, with its  
22      injunction of certain third-party direct claims against the  
23      released parties, violates the due process clause by taking  
24      those claims without the right to a hearing and a trial,  
25      citing and relying on large measure upon *Ortiz v. Fibreboard*

1 Corp., 527 U.S. 815 (1999).

2 As far as the notice point is concerned, I made  
3 extensive factual findings as to the notice that was  
4 provided and was received by those who are creditors of the  
5 Debtors. I will note my view that the plan itself and the  
6 underlying claims that have been identified by the U.S.  
7 Trustee apply to release or enjoin direct third-party claims  
8 that overlap with in a highly meaningful way claims of the  
9 Debtors or against the Debtors. And therefore, such notice  
10 would be sufficient. I will note further that there is no  
11 absolute right to a trial beyond the trial that the court  
12 held as to the bona fides of the settlement with its right  
13 to object, which was preceded by a right to vote on the plan  
14 and to object to the plan generally, including the  
15 classification scheme set forth in the plan.

16 That scheme and the right to vote and the review  
17 by the bankruptcy court clearly distinguishes the bankruptcy  
18 process as recognized by the Second Circuit that would  
19 encompass certain types of releases of third-party claims  
20 from the fact pattern and concerns raised by the Supreme  
21 Court in Ortiz, where there was a concern that those that  
22 would be bound by a non-opt-out settlement were not  
23 adequately represented because of conflicts of interest,  
24 where there was no vote, and no plan process including the  
25 right to object to classification and voting, and ultimately

1 the court's review of the proposed settlement in that  
2 context.

3 The Supreme Court largely recognized this fact in  
4 Ortiz itself, recognizing that its general view as to due  
5 process was qualified by a special remedial scheme, quoting  
6 Martin v. Wilks, 490 U.S. 755, 762, Note 2 (1989), which  
7 specifically referenced the bankruptcy legislative scheme.

8 I believe the bench ruling sufficiently dealt with  
9 the inapplicability of the 524(e) argument, including citing  
10 well-reasoned opinions by other circuit courts on it.

11 As a factual matter, I will note that the U.S.  
12 Trustee took no discovery in connection with the  
13 confirmation hearing or generally in the case as a whole and  
14 largely played the role of a kibitzer on the evidence during  
15 the trial, offering no witnesses of its own. And to the  
16 extent it does, or the U.S. Trustee does object to the  
17 analysis of the merits of the settlement, I find it highly  
18 unlikely that that analysis would prevail on appeal.

19 As far as the moving states' arguments on the  
20 merits that overlap with the ones that I just raised, I  
21 won't address them again. But I will note that I believe I  
22 comprehensively dealt with their classification arguments  
23 and their voting arguments and that the evidence in my  
24 analysis of recoveries under 1129(a)(7) clearly establishes  
25 that the plan would satisfy the best interest test even if

1 one considered the rights that they were being required to  
2 give up to pursue third-party claims against the released  
3 parties, although that was an alternative holding.

4 The U.S. Trustee's and the states' other  
5 arguments, however, I believe if there was a strong showing  
6 of irreparable harm, would satisfy the first prong of their  
7 burden of proof. The U.S. Trustee is clearly wrong that  
8 personal injury claimants and other creditors are receiving  
9 nothing on account of their third-party claims against the  
10 released parties. It is clear that it is the settlement of  
11 those third-party claims that enables the entire plan and  
12 the distributions under the plan, without which they would  
13 receive in my view as I found based on the analysis of the  
14 evidence, including the rights of the United States in the  
15 DOJ settlement to a super-priority claim and the limited  
16 recoveries that they would have in the free-for-all  
17 litigation that would ensue, literally no recovery.

18 The plan treats personal injury claims as  
19 receiving a distribution based on the liquidation of the  
20 underlying claim against the Debtor. That does not mean  
21 that the personal injury claimants are not receiving value  
22 on account of their third-party claims, but it reflects I  
23 believe that their third-party claims are overlapping, and  
24 though entitling them perhaps to a direct recover as opposed  
25 to a recovery through the Debtor, viewed as derivative



1 claims under the analysis by the circuit in the Tronox case  
2 as well as by other courts that have distinguished claims  
3 that may be direct but are asserted because of harm to all  
4 of a debtor's creditors as opposed to individual creditors  
5 as discussed in the Tronox case, which is referenced and  
6 discussed at some length in my opinion. See also the  
7 discussion in Deutsche Oel & Gas S.A. v. Energy Capital  
8 Partners Mezzanine Opportunities Fund A, LP, U.S. Dist.  
9 LEXIS 181000 (S.D.N.Y. September 20, 2020), and In re CIL  
10 Limited, 2018 Bankr. LEXIS 354 (Bankr. S.D.N.Y. February 9,  
11 2018).

12 As I also noted in the memorandum in support of  
13 the order, the circuit has now made it clear,  
14 notwithstanding the citation by the U.S. Trustee of Johns  
15 Manville Corp. v. Chubb Indemnity Insurance Company, 606  
16 F.2d 135, 153-154 (2d. Cir. 2010), that the evaluation is  
17 only in respect of in rem claims. As stated and discussed  
18 at length in the Quigley case, the Court's power extends to  
19 in personam claims as long as the factors laid out by the  
20 Circuit are satisfied after a searching inquiry by the  
21 Court.

22 However, those factors have been the subject of  
23 different analyses over the years as to what is properly  
24 subject to an injunction of a direct third-party claim. And  
25 I believe that it is that issue, i.e. how those claims are

1       cabined between the clear instance where they should not be  
2       enjoined as discussed in the Manville III opinion, and where  
3       they should be.

4               I have tried to narrow those so that it does  
5       reflect in the plan that such claims are only those where  
6       there is a substantial or an entire overlap. And I believe  
7       that the factual record of the claims that the U.S. Trustee  
8       purports to be protecting reflects just that overlap, i.e. a  
9       lack of direct fraud as opposed to allegations of extensive  
10      control over an enterprise that itself engaged in fraud or  
11      other violations of consumer law which would apply to all  
12      creditors, to protect all creditors of the debtors.

13             While I believe there is less of a fair ground for  
14      litigation on the second point which is raised only by the  
15      moving states, namely that notwithstanding there being any  
16      specific protection for them in the Bankruptcy Code, their  
17      status as a governmental entity takes them out of the reach  
18      of this particular plan injunction. Notwithstanding that,  
19      the injunction at this point given the creditors' other  
20      agreements applies just to the creditors' right to pursue  
21      monetary claims against the third parties.

22             The state creditors have argued that the deterrent  
23      effect of pursuing those claims is a valid governmental  
24      interest, which to some extent it is. But I believe that it  
25      is going far too far to state that that interest requires

1       them to decide whether there would be a trial or not of such  
2       claims where they overlap with the claims against the  
3       Debtor's estate and by the Debtor's estate, as I believe  
4       they are cabined under the plan.

5               I will note that the moving states have at times  
6       argued that that public interest extends to their right to  
7       take discovery and engage in a trial, but I will also note  
8       that they have touted in this motion the benefits of the so-  
9       called national settlement in the multi-district litigation  
10      in which two of the three of them are parties where there  
11      has been no trial by them, and I believe far less discovery  
12      that occurred in this case, that they would have and did  
13      have direct access to. But with that also I believe that  
14      that package of issues is an issue for consideration  
15      appropriately under the first prong of the test for  
16      obtaining a stay pending appeal.

17             The other most critical factor is whether the  
18      movant will be irreparably injured absent the stay. For all  
19      intents and purpose, although the movants have each  
20      attempted to argue other injuries, the injury that they  
21      posit as an irreparable injury is the risk that during the  
22      course of their appeals, the plan would be so far  
23      consummated that the appeals would become equitably moot.

24             The equitable mootness doctrine is at one level  
25      fairly well established in the Second Circuit, although

1 throughout the country there is a wide variation on how  
2 courts look at it. I say at one level because the courts  
3 have also made it clear that, "The doctrine is deployed in a  
4 pragmatic and flexible fashion and must be responsive to the  
5 specific factors presented in a particular case ultimately  
6 to focus on as a prudential matter whether a court should  
7 dismiss a bankruptcy appeal when even though effective  
8 relief could conceivably be fashioned, implementation of  
9 that relief would be inequitable." See *Beeman v. BGI*  
10 *Creditors' Liquidating Trust (In re BGI, Inc.)*, 772 F.3d  
11 102, 107-08 (2d Cir. 2014) and *GLM DWF Inc. v. Windstream*  
12 *Holdings Inc. (In re Windstream Holdings Inc.)*, 838 Fed.  
13 *Appx. 634* (2d Cir. Feb. 18, 2021). Where a plan has been  
14 substantially consummated, the circuit presumes that an  
15 appeal is equitably moot. And in that circumstance, a party  
16 seeking to overcome that presumption may do so only by  
17 demonstrating that five factors are met. But that of course  
18 is only where, again, a plan has been substantially  
19 consummated under the Bankruptcy Code, *id In re Windstream*  
20 *Holdings Ind.*, 838 Fed. *Appx. 634, 636*.

21 The course by a vast majority have held that the  
22 possibility of equitable mootness standing alone does not  
23 constitute irreparable harm. Rather, it is a form of  
24 prejudice which with some other consideration can constitute  
25 equitable harm. Again, taking into account the equitable

1 nature of the request for relief, i.e. the stay pending  
2 appeal, it would seem to me that that other factor can be  
3 any one of the three other factors, i.e. the very importance  
4 and seriousness of the appeal on the merits and the harm or  
5 lack of harm to other parties and/or the public interest,  
6 which includes both a sense of the importance of the  
7 finality of bankruptcy plans where they are complicated and  
8 involve delicately-negotiated and extensively-reviewed  
9 compromises as against the public interest in literally  
10 getting an appeal right beyond the trial court  
11 determination. See for example the discussion of this topic  
12 in *In Re Adelphia Communications Corp.*, 361 B.R. 337, 347-  
13 348 (S.D.N.Y. 2007) and *In re St. Johnsbury Trucking*  
14 *Company*, 185 B.R. 687 (S.D.N.Y. 1995), both of which cases  
15 considered some balancing of the other factors in addition  
16 to the risk of equitable mootness.

17 And on the other side of the equation, the  
18 discussion in *In re Windstream Holdings Ind.*, 2020 U.S.  
19 Dist. LEXIS 167183 (S.D.N.Y. August 3, 2020) where the  
20 district court makes the clearly correct point that merely  
21 invoking equitable mootness as the appellants have done  
22 here, a risk that is present in any post-confirmation appeal  
23 of a Chapter 11 plan, is not sufficient on its own to  
24 demonstrate irreparable harm. That's id at Page 7 quoting  
25 *In re Calpine Corp.*, 2008 Bankr. LEXIS 217 (Bankr. S.D.N.Y.

1 January 24, 2018). See also *In re W.R. Grace & Company*, 475  
2 B.R. 34 -- I'm sorry, I have the wrong cite. It's at Pages  
3 207 through 08 (D. Del. 2012), affirmed 729 F.3d 332 (3rd  
4 Cir. 2013).

5 In the cases where courts have taken seriously the  
6 risk of equitable mootness, they have either, as in the  
7 *Adelphia* case, had grave doubts about the merits of the  
8 appeal and believe that they needed to be addressed, or the  
9 harm to the other parties was offset by the need for an  
10 appeal where there was other irreparable harm besides  
11 mootness that would occur if the appeal were not heard.

12 As for the mootness issue as irreparable harm and  
13 irreparable harm in general, the allegation of irreparable  
14 harm and the showing of it must be neither remote nor  
15 speculative, but actual and imminent. The possibility of  
16 irreparable harm is too lenient. *Nken v. Holder*, 556 U.S.  
17 434-435 and *In re Sabine Oil & Gas Corp.*, 551 B.R. 143.

18 Here, the appellants are in two different camps as  
19 far as the relief that they are seeking from me. The U.S.  
20 Trustee has clearly asked for a stay pending appeal  
21 throughout all of the appeals, i.e. through potentially  
22 determination of its appeal by the Supreme Court. It has a  
23 fallback position in which it asks for a stay through the  
24 district court determination on the appeal plus some  
25 additional time.

1           The moving states I think are much more focused on  
2           a short-term stay. And based on their remarks during oral  
3           argument, I believe they would confine their motion to such  
4           a request.

5           As I stated during oral argument, and I won't  
6           repeat the cases that I cited, it seems to me that  
7           Bankruptcy Rule 8025 effectively limits the bankruptcy  
8           court's ability to issue a stay pending appeal of a district  
9           court's order. The provisions of Rule 8007 and Rule 8025 do  
10          not entirely mesh, as noted by the district court in Credit  
11          One Bank N.A. v. Anderson (In re Anderson), 560 B.R. 84, 88  
12          (S.D.N.Y. 2016). But as I've previously cited, there are  
13          plenty of cases where bankruptcy courts have limited their  
14          stays because of Rule 8025 up to the date of the district  
15          court's ruling.

16          I believe that is appropriate here not only  
17          because of Rule 8025, but also because of the distinctly  
18          different factual considerations underlying a request for a  
19          stay pending appeal in these appeals and in these cases for  
20          a stay pending appeal through the district court's ruling  
21          and a stay thereafter.

22          The district court has made it clear that it is on  
23          a fast track to determining the appeal, which it will hear  
24          oral argument on at the end of November and may well rule on  
25          by the end of the first week of December. Moreover, the

1 appellees have stipulated and will be prepared to add to  
2 that stipulation based on the record at oral argument that  
3 they will not cause the effective date to occur, that is the  
4 effective date of the plan, until the earlier of the  
5 district court's ruling, which under Rule 8025 and results  
6 in, unless the district court orders otherwise, a 14-day  
7 stay and December 31.

8 They have also stipulated that they will not argue  
9 equitable mootness to a subsequent appellate court, whether  
10 that's the Second Circuit or the Supreme Court based on  
11 actions taken prior to the effective date of the plan,  
12 including in respect of the advance order.

13 Based on my review of the plan in addition to that  
14 stipulation, it is highly unlikely that the plan would  
15 permit any actions to be taken prior to the effective date  
16 that would come anywhere close to the types of transactions  
17 that give rise to equitable mootness under the law of the  
18 Second Circuit. That includes coming anywhere close to  
19 achieving substantial consummation of the plan under the  
20 Bankruptcy Code.

21 The appellees have further stipulated that they  
22 will give the appellants, including the movants, 14 days'  
23 notice of their actual efforts to cause the effective date  
24 to occur, of the actual effective date that is, or the  
25 projected effective date.



1           Finally, they have stated -- and again, this would  
2     be a condition for my order -- that they would render the  
3     movant's equitable mootness arguments moot by agreeing that  
4     the hearing on the sentencing of the debtors under the DOJ  
5     settlement agreement, that that hearing would be no earlier  
6     than December 31, which it is clear is the actual date that  
7     will be one where there is ample notice, clearly more than  
8     14 days' notice, to the appellants, including the moving  
9     parties here.

10           Given all of the foregoing and the burden of proof  
11     as to irreparable harm that the movants have, I conclude  
12     that they have not established irreparable harm with respect  
13     to a stay which I believe is the only appropriate stay that  
14     I could grant, which is to the date of the district court  
15     ruling and a reasonable outside date wherein there would be  
16     sufficient notice for the movants to renew a stay motion in  
17     the district court.

18           The Debtors have suggested December 31 for that  
19     outside date, and it has been suggested to me by the movants  
20     that that date, being New Year's Eve and during the holiday  
21     season, may place an undue burden on the district court in  
22     scheduling a stay hearing, and to a lesser extent a burden  
23     on the parties. However, again, it appears more likely to  
24     me, although of course this is entirely up to the district  
25     court, that the district court will rule before December 31.

1 And I believe that the scheduling issue can be dealt with by  
2 saying the earlier of the district court's ruling and  
3 December 31 or such later date. I'm sorry, subject to the  
4 district court's calendar. So if the district court is not  
5 available at or around December 31 to hear a potential  
6 renewed stay motion depending on the district court's ruling  
7 and when that occurs, then it would be the later date for  
8 the district court to hold the hearing.

9 Clearly, the parties here have already prepared  
10 their stay motions. Indeed, the U.S. Trustee prepared four  
11 of them, which are all in my pleading binder. And we have  
12 had an extensive record for this hearing. I believe under  
13 those circumstances it's not a burden for them if the  
14 district court can schedule a stay hearing if they decide to  
15 make a stay motion after the district court's ruling by the  
16 outside date of December 31 if the district court had not  
17 ruled by then.

18 Otherwise, the appellate process would be governed  
19 by Rule 8025. And accordingly, I believe that a key element  
20 on the conditions that I just stated for the movants  
21 prevailing on the request for a stay pending appeal has not  
22 been met.

23 I will also address, however, the last two prongs  
24 that the movants would have to show, namely that there is no  
25 substantial injury to other parties interested in the

1 proceeding and where the public's interest lies.

2 As far as there being no substantial harm to other  
3 parties interested, the record here is clear and I believe,  
4 frankly, uncontroverted that there is to the contrary  
5 substantial harm to the Debtor's creditors, the vast  
6 majority of whom have either not objected to the plan and/or  
7 voted in favor of the plan affirmatively in each instance,  
8 the vast majority that is.

9 After the Debtors are ready to have the effective  
10 date of the plan occur, and it appears to me that that would  
11 not be realistically before December 31, although perhaps a  
12 week before they could be ready, after that date when they  
13 are ready, every day that they do not implement the  
14 effective date which starts the process of liquidating  
15 personal injury claims and making distributions on them and  
16 making the initial distributions for abatement purposes  
17 seriously causes harm to the creditors. It is clear to me  
18 that the personal injury creditors bargained for a rapid  
19 payout, which is reflected not only in their bargaining for  
20 a fixed, upfront sum of several hundred million dollars, but  
21 also the procedures they've adopted for consistent with due  
22 process and the burden of proof a streamlined option to  
23 liquidate one's proof of claim.

24 Similarly, the roughly up to a billion dollars  
25 minus the funds going to the personal injury creditors would

1 be going out shortly after the effective date through 2023  
2 for abatement purposes, as well as the \$225 million payment  
3 to the United States, which although not specifically  
4 earmarked for abatement purposes, United States has  
5 represented the vast majority of which will go to hospitals  
6 and other care facilities. This is amply testified to by  
7 Mr. Guard as far as the payments are concerned at Paragraphs  
8 9 through 13 of his declaration as well as at Paragraphs 7  
9 through 9 and 12 through 21 and in the summary at Paragraph  
10 25 of Mr. DelConte's declaration. That declaration also  
11 address in Paragraph 22 and 23 the funding of Newco and  
12 setting it up as a public benefit company to focus on  
13 developing products at a reasonable price to combat the  
14 opioid crisis.

15 As Mr. Guard eloquently summarized, many states  
16 have been litigating these issues since, well -- I'll quote  
17 him, because it's actually quite telling -- for as long as  
18 five years before the commencement of the bankruptcy case in  
19 addition to the two years of this bankruptcy case. I  
20 believe that that length of time was necessary to satisfy  
21 the due process Iridium and Metromedia factors as well as to  
22 negotiate the intricate intercreditor deals in the plan.  
23 The additional time of a stay pending appeal after the  
24 district court's ruling is necessary only to have further  
25 appeals. There is nothing else that would hold up the

1 payment of the money.

2 As Ms. Juaire and Ms. Trainor eloquently have  
3 testified, that payment is, if made, to be put to use both  
4 for the immediate needs of the individual victims and for  
5 abatement purposes at a time when every dollar counts. And  
6 as time passes, the problem only gets worse.

7 As testified to by Mr. Guard and Mr. Jorgenson,  
8 opioid deaths have been increasing over the last two years  
9 at a very disturbing level, roughly 30 percent nationally,  
10 such that in the last year of March to March, roughly 200  
11 opioid-related overdose deaths occur each day.

12 I agree with the states of Washington and  
13 Connecticut that if the parties could all agree that those  
14 initial distributions could be made and the parties who are  
15 appealing would take the risk on equitable mootness with  
16 regard to those distributions, that would be all to the  
17 good. But the U.S. Trustee and the State of Maryland do not  
18 seem to be prepared to agree to such a resolution to get  
19 money out promptly.

20 So on the one hand, we have that clear, tangible  
21 harm. On the other hand, post the date when the Debtors  
22 would be ready to go effective, which, again, would be at  
23 the end of this year, we have tangible harm as described in  
24 the Juaire, Trainor, Guard and Jorgenson declarations,  
25 contrasted with the legitimate but non-economic harm of

1 having extra layers of appeal.

2 The public interest factor in some respects  
3 dovetails with the foregoing analysis. The U.S. Trustee  
4 states that it is protecting the interests of those who did  
5 not object to the plan but did not affirmatively accept it  
6 and those who did object to the plan. It has not, however,  
7 provided any information to me that would indicate that  
8 those parties would effectively be able to pursue their  
9 claims against the released parties to recover anything and  
10 would not -- and in addition would not recover any amounts  
11 from the Debtors.

12 The vindication of that public policy, i.e.  
13 protecting the minority, at some point -- and I believe that  
14 point comes soon after the Debtors are ready for the  
15 effective date, although maybe with enough time to have an  
16 expedited appeal to the circuit depending on the seriousness  
17 of the issues on appeal -- is sufficient to carry the day on  
18 the public policy point. But those issues can be addressed  
19 by the district court if there is a motion for a stay after  
20 its ruling.

21 In light of its assessment of all four factors,  
22 including the first factor, the likelihood of success on  
23 appeal, and with the benefit of this record which, again, is  
24 extensive with extensive evidence offered by the party that  
25 doesn't have the burden of proof on this issue, the

1 objectants, with no evidence offered for what I'll refer to  
2 as the longer stay issue of the balance of harms by the  
3 movants.

4           The other public interest factor I have been told  
5 is the deterrence factor. I will note, however, that at  
6 some point the public's desire to get paid may well outpace  
7 that deterrence factor, particularly where, again, the issue  
8 is one simply of a fight over money and the movants can  
9 simply not close their eyes to the fact that their  
10 litigation alternatives are ones where they already with  
11 regard to other defendants that they have pursued have  
12 resulted in settlements rather than trials and where the  
13 effect of a lengthy stay would prevent the release of the  
14 document repository which can be used not only by the public  
15 and academics, but also to actually fight the remaining  
16 trials and litigation that's pending against other parties.

17           Counsel for the Ad Hoc Committee of Personal  
18 Injury Claimants has suggested that I require at this point  
19 the posting of a bond by the states and the non U.S. Trustee  
20 appellants. Of course the posting of a bond to protect the  
21 appellees from the adverse effects of a stay is the norm  
22 rather than the exception. And even where the Court has  
23 believed that there are not just possible but quite probable  
24 issues on the merits, it has required the posting of a bond,  
25 and a substantial bond pending appeal. See In re Adelpia

1       Communications Corp., 361 B.R. 337.

2               The U.S. Trustee I believe correctly points out  
3       that Rule 8007(d) exempts the federal government from a bond  
4       requirement. And while that language is not entirely clear,  
5       I believe that that is the case. However, that does not  
6       help the U.S. Trustee on the issue of the harm to other  
7       parties or the balancing of the harms since it offers  
8       nothing in return for the risk that it will have been wrong  
9       and have pursued a lengthy appeal process that results in  
10      the substantial delay of payments that literally save lives  
11      and families.

12              8007(d) says nothing about any other entity,  
13      including any other governmental entity being exempt from  
14      the bond requirements. And in fact, there is meaningful  
15      caselaw on that point or under the analogous Federal Rule of  
16      Civil Procedure 62. The fact that state courts don't impose  
17      a bond on other states I believe is irrelevant, as noted by  
18      more than one of the objectors. A federal statute including  
19      the Bankruptcy Code as interpreted by the bankruptcy courts  
20      will defeat a state's interest in enforcing its law and in  
21      protecting appellees if in fact it obtains a stay. The  
22      basic principle was set forth in *Butner v. United States*,  
23      440 U.S. 45, 48 (1979). And, in fact, in other cases bonds  
24      have been imposed on states. I cited one of those during  
25      oral argument, *Lightfoot v. Walker* 797 F.2d 505 (7th Cir.



1 1986), a decision by Judge Posner. See also Cayuga Indian  
2 Nation of New York v. Pataki, 188 F. Supp. 2d 223 (S.D.N.Y.  
3 2002) and PAO Tatneft v. Ukraine, 2021 U.S. Dist. LEXIS  
4 102179, 6-7 (D.D.C. June 1, 2021). That latter decision  
5 also is authority for requiring the Canadian entities to  
6 post a bond.

7 Again, I do not believe a bond is required with  
8 respect to the order that I will grant, which denies the  
9 stay request. But I am denying the U.S. Trustee's request  
10 for a broader stay, i.e. one that would last through the  
11 entire appellate process because it is not posting a bond.  
12 And I would deny a similar request by the movant states  
13 because they have not offered to post a bond where it is  
14 clear that there would be substantial harm to third parties  
15 occasioned by delay after the date when the Debtors have  
16 acknowledged they will, and only by that date, be ready to  
17 go effective with their plan.

18 Counsel for the Ad Hoc Committee of Personal  
19 Injury Claimants has also suggested that I oppose additional  
20 reciprocal conditions on my not granting the motion,  
21 reciprocal to the conditions that I am imposing on the  
22 debtors and the other plan proponents. They would basically  
23 go to any efforts by the movants to delay emergence other  
24 than of course through the appellate process. That would  
25 include continuing their commitment to an expedited

1     appellate process, not seeking to adjourn the sentencing  
2     hearing before the district court in New Jersey and the  
3     like.

4             I am not prepared to impose those conditions.  
5     However, I will reserve the appellee's right to revisit  
6     those conditions if such delaying tactics are undertaken. I  
7     don't believe they will be because I believe they are  
8     antithetical to the stated goals of the movants to expedite  
9     the appeal process and get money out to claimants. But if  
10    that proves not to be the case, then I will lift the  
11    conditions that I am imposing as a quid pro quo to my not  
12    granting the stay motions.

13            I noted that the Canadian claimants' motion  
14    essentially rides along on the mootness point with the other  
15    three motions that I have described. On the merits point,  
16    it addresses arguments unique to the Canadian claimants  
17    based on their assertions that they are sovereign entities  
18    and therefore that their rights cannot be constrained. I  
19    have clearly disagreed with that in my confirmation ruling.

20            I will also note that the objections to the  
21    Canadian claimants' points on this argument are well taken.  
22    Canadian claimants, not all of them, but Canadian claimants  
23    in their group have filed proofs of claim in these cases on  
24    behalf of all of the claimants, which would subject them to  
25    the court's jurisdiction. Moreover, the claimants' rights

1 are not specifically protected under the Bankruptcy Code.  
2 They fall into the waiver of sovereign immunity for  
3 governmental entities.

4 And again, I believe that the comprehensive  
5 bankruptcy scheme recognized by not only Ortiz but also  
6 Butner and the circuit in Manville IV, 606 F.3d 135, all  
7 contemplate that those types of rights can be constrained by  
8 the Court even where they pertain to or limit the ability to  
9 pursue claims that are direct claims, at least where those  
10 direct claims overlap with claims assertable by all  
11 creditors and based on actions that are primarily actions  
12 through the Debtors.

13 So I will look for an order consistent with my  
14 ruling. I will not require a notice of when the Debtors are  
15 asking for a hearing date, but only a notice of the hearing  
16 date (indiscernible) the hearing date. I will not extend  
17 the outer date for their condition beyond December 31, but  
18 that will be subject to the district court's schedule,  
19 obviously tying into the commitment that has already been  
20 given by the appellees of a 14-day notice of the actual  
21 effective date, which is all tied to giving the movants time  
22 to renew their motion for appeal -- I'm sorry, for a stay  
23 pending appeal, excuse me.

24 All right, are there any questions on what the  
25 order should say?

1 MR. FOGELMAN: Your Honor, this is Larry Fogelman  
2 on behalf of the United States. May I make one comment?

3 THE COURT: Okay.

4 MR. FOGELMAN: It's really -- it's just a  
5 clarification of one of the comments that Your Honor made.  
6 While it's true that almost all of our civil recoveries for  
7 the federal healthcare agencies that do help treat opioid  
8 use disorder, I just -- and that includes the \$225 million  
9 from the Sackler settlement which will be a civil claim.  
10 And that was addressed in the letter that we filed with the  
11 Court. I just want to clarify that the \$225 million asset  
12 forfeiture recovery under the plea agreement, that's  
13 required by statute to go to the asset forfeiture fund  
14 (indiscernible). I think Your Honor had said that the asset  
15 forfeiture amount goes to the federal healthcare agencies.  
16 So I just wanted to make that clarification for the Court.

17 THE COURT: Okay. Thank you.

18 MR. FOGELMAN: Thank you.

19 THE COURT: All right. So are there any questions  
20 on the order? No?

21 MR. KAMINETZKY: We will do our best, Your Honor.  
22 I think we understand.

23 THE COURT: I don't want the parties to spend an  
24 enormous amount of time negotiating this order. If there is  
25 a disagreement about what the parties think I said, you

1       should promptly send me the alternative proposed orders with  
2       the second one blacklined to show the changes and I'll enter  
3       the one that I believe is consistent with my ruling.

4               MR. KAMINETZKY: We will do so, Your Honor.

5               THE COURT: Okay, very well. Thank you.

6               (Whereupon these proceedings were concluded at

7       6:32 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

A handwritten signature in black ink that reads "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

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Mineola, NY 11501

Date: November 12, 2021

[&amp; - 20th]

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